S. HRG. 100-568

REAUTHORIZE HOUSING RELOCATION UNDER THE NAVAJO-HOPI RELOCATION PROGRAM

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1236

TO REAUTHORIZE HOUSING RELOCATION UNDER THE NAVAJO-HOPI RELOCATION PROGRAM

DECEMBER 9, 1987
WASHINGTON, DC

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[1] Copies of this report can be purchased from: U.S. Geological Survey Books and Open-File Reports Section, Federal Center, Building 41, Box 25425, Denver, CO 80225.

[2] Copies of this report can be purchased from: U.S. Geological Survey Books and Open-File Reports Section, Federal Center, Building 810, Box 25425, Denver, CO 80225.

REAUTHORIZE HOUSING RELOCATION UNDER THE NAVAJO-HOPI RELOCATION PROGRAM

WEDNESDAY, DECEMBER 9, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 3:43 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, Daschle, Murkowski, and McCain.

Also present: Representative John J. Rhodes, III.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The Chairman. The committee will please come to order.

S. 1236 is a bill to increase the annual housing authorization for the Navajo-Hopi Relocation Commission and to increase the Commission's authorization level for payment of bonuses to individuals who voluntarily apply for benefits under Public Law 93-531, the Navajo-Hopi Land Settlement Act.

Perhaps no other current issue in Indian affairs is as important or as urgent or as sensitive as the resettlement of Navajo people from lands partitioned to the Hopi Tribe under the 1974 act. The uprooting of any people for any purpose can only be painful and distressing to them and to those responsible for carrying out resettlement.

Every Member of the Congress has some awareness of the relocation process and the disruption of the many lives the relocation has necessitated. No other Indian condition has so captured the attention of the American people and their representatives in Congress for such an extended period of time.

As originally envisioned by the Congress, the entire process of moving Navajo people from lands partitioned to the Hopi Tribe and Hopi people from lands partitioned to the Navajo was to take five years. The Navajo-Hopi Relocation Commission was established and funded as an agency responsible for the movement of these people.

It has now been 6 years, and the job is far from done. The myriad of problems associated with moving 10,000 traditional Navajo people from lands they have occupied for about 100 years has proven far more difficult than anticipated.

The Relocation Commission believes that the new housing required can be constructed in 3 or 4 years if the appropriation level is raised. S. 1236 would increase the housing authorization level from $15 million to $30 million per year. Additionally, the bill would increase the funding available for incentive bonus payments to those individuals who voluntarily agree to relocate.

The committee looks forward to testimony on these issues. We also look forward to hearing from the witnesses regarding amendments proposed by two very distinguished members of this committee, Senator DeConcini and Senator McCain, that would reorganize and restructure the Commission.

[The text of S. 1236 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1236

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 13), 1987

Mr. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Subsection (a) of section 25 of Public Law 93-531 (25 U.S.C. 640d-24(a)) is amended—

(1) by striking out "$7,700,000" in paragraph (4) and inserting in lieu thereof "$13,000,000", and

(2) by striking out "$15,000,000 annually for fiscal years 1983 through 1987" in paragraph (8) and inserting in lieu thereof "$30,000,000 for fiscal year 1988, and for each succeeding fiscal year".

SEC. 2. Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C. 640d-25)) is amended to read as follows:

"(b) Funds appropriated under the authority of subsection (a) may be used by the Commission for grants, contracts, or expenditures which significantly assist the Commission in carrying out the duties of the Commission or assist the Navajo Tribe or Hopi Tribe in meeting the requirements of this Act.".

○

The CHAIRMAN. Our first witness this afternoon is the Chairman of the Navajo-Hopi Relocation Commission, Mr. Hawley Atkinson. He will be accompanied by Commissioner Sandra Massetto and Ralph Watkins as well as Mr. Chris Bavasi, executive director, and Mr. Mike McAllister, business manager.

Before proceeding, I would like to welcome Congressman John Rhodes, the Ranking Minority Member of the Indian Task Force of the House Interior and Insular Affairs Committee. Mr. Rhodes has played an important and continuing role in this unfortunate controversy, and we are pleased to have him here.

I believe that Senator McCain has a statement to make at this time.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman. I will be brief as I know we want to hear the very important witnesses that are before us.

I would like to first, of course, extend my deep appreciation on behalf of many Arizona people for your deep and abiding interest in this issue. I know you have taken a personal interest. You have had meetings with tribal leaders, and you have devoted a great deal of your time to helping resolve this issue which is fraught with pain and suffering, and I am very appreciative of that.

I also appreciate the efforts of my colleague, Senator DeConcini, in this longstanding issue that we face, and I look forward to hearing the testimony of the witnesses on the bill and also on the amendments which were sent to the witnesses which would make changes in the structure and the operation of the Relocation Commission in the implementation of Public Law 93-531.

Briefly, Mr. Chairman, the amendments would create a single commissioner, limit the amount for legal services contracts, require additional reports to the Congress, prohibit lobbying of the Congress, with appropriated funds, allow a modified lifting of the Bennett freeze except for new housing construction, and repeal the provision of law authorizing Secretarial payment of attorneys' fees for both tribes.

Mr. Chairman, I have known personally for many years both the commissioners and the staff. I believe that they have done a dedicated job under very difficult circumstances. My amendments are in no way to be construed as a criticism or condemnation of their activities. I hope that we would view these amendments which I would hope would get serious consideration from this committee and the Congress as a way to improve the functions of the commission.

I would also like to point out that these amendments are not intended to preclude any negotiated settlement between the two tribes for a comprehensive settlement.

Mr. Chairman, I think it would be important to point out the real answer to this problem—and I am sure that our commissioners would agree—is a negotiated settlement between the two tribes. I, Congressman Udall, Senator Goldwater, Senator DeConcini, everybody that I know of, including you, Mr. Chairman, has urged

time after time that the two chairmen sit down and negotiate this problem. Unfortunately, that is not possible and has not been possible in the past. I still hope that some day it will be possible. However, lacking that negotiated agreement between the two tribes, we have to more forward in some fashion.

Mr. Chairman, as you are aware, Congressman Udall and I offered a comprehensive settlement last year but subsequently withdrew the bill for lack of support. At present, I am not convinced that a comprehensive-type settlement has any greater degree of support than the bill I co-sponsored last year. Unless there is strong support in both houses, it is my belief that introduction of such a measure would needlessly raise the hopes of Navajo people once again.

In lieu of any settlement, Public Law 93-531 remains the law and must be carried out. In carrying out this law, however, every effort must be made to ensure the relocation program is carried out in a humane and generous fashion.

I would like to again thank Senator DeConcini for his efforts for many years before I even arrived in the Congress and for trying to reach a settlement on this issue and his continued and abiding involvement in the issue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator DeConcini.

STATEMENT OF HON. DENNIS DECONCINI, U.S. SENATOR FROM ARIZONA

Senator DECONCINI. Mr. Chairman, I join my colleague, Senator McCain, in thanking you personally and the committee staff for the time that you devote to this subject matter as well as many other Native American issues in my State of Arizona. I know that you have a commitment that no one will fail to be heard in this committee and that you would like to help implement some settlement of this matter. So, my thanks and gratitude to you and also to my colleague.

I want to welcome those from Arizona, the commission members who are here. We have certainly had our disagreements over the years. I know you are honorable people and that you have tried to do what you have been charged to do.

As I have said many times, Congress created the most difficult task imaginable when it mandated the relocation to solve a dispute over land between two Indian tribes. By enacting Public Law 95-531, the Navajo-Hopi Relocation Act, Congress laid the responsibility for implementing the relocation program on three members of a commission whom we now have here before us.

Unfortunately, no matter where or how a forced relocation program is carried out, it is the most difficult job that I know of anyone to be tasked to do. To much dismay on my part and, I know, on the part of the tribes and the commission members, our experience in this case is not much different. There are many problems which have developed in the course of the effort to carry out this law, a law which, in this Senator's judgment, is not a humane law, and the burden of the unjust situation created by the law falls

heaviest on those who are closest to the situation, the families who are forced to move and those who are charged with the responsibility of helping the families to move.

I have argued for a change in the law for a long time. I have insisted that the families who are affected be treated with the utmost sensitivity. I still believe that the best response to the pain and suffering of the families is for Congress to enact a comprehensive settlement and a final settlement.

Senator McCain had the courage, along with Congressman Udall, to introduce such legislation last Congress, and I compliment him for that. I thought about doing it myself but realized that it was going to take far more than what this Senator had to get serious consideration for that. And though it was pulled away, as explained by the Senator from Arizona, I still compliment him for stepping forward on a very sensitive issue that probably has no political benefits for anyone but is only an effort of trying to deal with a humanitarian issue.

The settlement which might resolve the 1982 and 1934 disputes without forcing people to give up lands which they have lived on on a daily basis for hundreds of years is the one we seek. I am still convinced that our moral obligation to these citizens of our country deserve nothing less than the most humane treatment. I will continue to push for that kind of change.

In the meantime, it is important for us to consider some necessary changes to the way the commission is organized. I do not believe that the response to the difficulties associated with relocation is to increase the amount of money authorized for housing and the bonuses. I do not think that having money available will mean improvement in the program which has been riddled with problems, nor does it mean that the job will be completed any sooner.

Instead, I feel that changes along the lines suggested by my distinguished colleague, Senator McCain, are really worthy of consideration and, again, my compliments to him for the leadership of offering something up to be debated and discussed.

I have some changes I would like to suggest, and I would make those changes. I think the commissioner, for instance, should have a set term. I think the legal fees for land dispute ought to be left alone. I will work with members of both tribes and the BIA and, of course, Senator McCain.

Mr. Chairman, I have a lengthy statement here, but due to the witnesses who are here, I will ask that the balance of the statement be included in the record and, again, I thank the chairman for his concern on this issue.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

[The prepared statement of Senator DeConcini appears in the appendix.]

The CHAIRMAN. Yesterday, two powerful leaders of two powerful nations who have maintained an adversarial relationship for over 40 years sat together in the same room and signed a document that most Russians and most Americans would have said was impossible 10 years ago. It was an agreement that was freely reached by our 2 leaders.

What we have here today is a problem of Indian people in Indian country on which we have tried to impose a Washington solution. I think history has demonstrated time and again that Indian problems can be best resolved by Indian solutions, that the worst type of solution is one that is imposed upon them by outsiders.

I have said on several occasions to the leaders of these two great nations that if they continue to persist in carrying on this adversarial relationship, Washington would find it irresistible in coming forth with a "final solution." And that final solution, very likely, will be one that no one will like.

So, I plead with both leaders and the leaders of their respective nations to get together. We have the beginning of this opportunity, because we have together with us the Chairman of the great Navajo Nation and the Chairman of the Hopi Nation in this room, and this may be the first step toward resolving this matter.

However, before we do, I would like to call upon a distinguished citizen of the United States who has spent much time in trying to bring about a resolution, Mr. Atkinson. Welcome, sir.

STATEMENT OF HON. HAWLEY ATKINSON, CHAIRMAN, NAVAJO-HOPI INDIAN RELOCATION COMMISSION, ACCOMPANIED BY SANDRA L. MASSETTO, COMMISSIONER; RALPH A. WATKINS, JR., COMMISSIONER; CHRIS BAVASI, EXECUTIVE DIRECTOR; AND MICHAEL McALISTER, DIRECTOR OF MANAGEMENT

Mr. ATKINSON. Thank you, Mr. Chairman, Senator DeConcini, Senator McCain, and Congressman Rhodes.

I very much appreciate, Mr. Chairman, the recognition that Senator DeConcini and Senator McCain paid to the horrendous problem which we face in implementing the public law, and I appreciate that very much and I know both of my colleagues do.

Mr. Chairman, we appreciate the opportunity to appear before the committee today to provide our comments and answer any questions regarding the commission's proposed reauthorization.

Mr. Chairman, I have about 4 pages of statement. Do you wish us just to submit this for the record?

The CHAIRMAN. It is up to you, sir. If you would like to summarize, your full statement will be made a part of the record.

Mr. ATKINSON. I think, sir, then, that we will read the statement, and if you would indulge me, Mr. Chairman, I would like to ask Mr. Watkins who is the Vice Chairman to read the statement.

The CHAIRMAN. Fine, sir. Mr. Watkins.

Mr. WATKINS. Thank you, Mr. Chairman.

Mr. Chairman, as Mr. Atkinson said, we appreciate the opportunity to appear before the committee today to provide our comments and answer any questions regarding the commission's proposed reauthorization. We are also prepared and, at the committee's pleasure, would like to present a briefing on the commission's past activities, current status, and future plans for completion of the relocation project.

When the legislation establishing the Navajo and Hopi Indian relocation program was enacted in 1974, Congress estimated that 1,000 families would be affected by the partition of the Executive

Order Reservation of 1882. If that number had been accurate, the Relocation Commission would not be here today.

By June 30, 1986, the Relocation Commission had completed the relocation of 1,024 families, thereby completing the estimated number of relocations within the time frame established by Congress. There were, however, as of July 1986 an additional 1,558 certified eligible families remaining to be relocated. This, obviously, was one and a half times the original estimate of families which would be affected.

The Relocation Commission has been asked repeatedly to explain the reasons for the differences between the estimated number of families to be relocated and the actual number of families certified for relation benefits. Although the Relocation Commission has provided this information to various committees of Congress and the Navajo Tribe and Hopi Tribes, we would like to specifically address the issue today, for it is essential in understanding the need for reauthorization.

Neither the Congress nor the executive branch did an actual enumeration of the families residing on the disputed lands before the act was passed in 1974. One of the Relocation Commission's first tasks, after forming and staffing the agency, was to initiate an enumeration of families on the disputed lands based on the census data provided by the BIA.

The Relocation Commission was confronted with a number of problems in accomplishing an accurate identification of individuals living in the disputed area. The disputed lands of the 1882 Reservation consist of approximately 1.8 million acres. The area is relatively remote. The partitioned lands are accessible primarily by means of unimproved roads. Actually locating individuals in this vast rural area, with a low density of population was, therefore, difficult.

The Relocation Commission used aerial photographs and made direct contact with individuals, tribal officials, and trading post employees.

The most significant problem after contacting individuals was obtaining the required information from them. Even though the Relocation Commission used interpreters, it was difficult to translate into Hopi or Navajo the concept of relocation.

Some people were aware of the land dispute and the possibility or relocation, but the enumeration brought the harsh reality of having to move to the individual. Individuals were reluctant to talk to enumerators because they feared the loss of livestock, the loss of land, and the separation of family members by relocation.

In some instances, individuals refused to speak with us. In other instances, information about persons who were absent on the day of the interview was generally withheld.

Gradually, individuals began to understand the relocation program and began to apply for relocation benefits. The total number of applications received is 4,449. We estimate that there are 30 to 50 additional families who are living on the Hopi Partitioned Lands who have not applied for relocation benefits.

Another factor contributing to the additional numbers of families entitled to benefits under the program centers on the definition of residence. Congress directed the Relocation Commission to provide

benefits to and relocate those heads of household residing on the wrong side of the partition line. Congress, however, did not define the term "residing" but delegated that responsibility to the Relocation Commission.

Congress did provide the Relocation Commission with specific directives in developing the relocation program. Senate Report 93-1121 mandated that relocation be "thorough and generous." Public Law 93-531 required that the relocation plan "take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation" and "be developed to avoid or minimize, to the extent possible, such impacts."

The Relocation Commission and its attorney, in consultation with the Department of the Interior's solicitor, determined that the term reside meant "legal residence" rather than "physically occupying." The commission requested the GAO's review in 1978, and they concurred in writing with this legal interpretation.

The commission met frequently with the Office of the Field Solicitor and Deputy Assistant Secretary of the Interior in the formulation of its early regulations and definitions. The Relocation Commission and all the other parties involved believed that this definition of residency took into account the intent of Congress and the problems of the people in the former Joint Use Area.

Public Law 93-531 and subsequent amendments provided authorization for the Navajo and Hopi Indian Relocation Commission. The law, as amended, provided not to exceed $15 million annually from fiscal year 1983 through 1987 for the purpose of carrying out the provisions of section 15. This section addresses the actual acquisition of replacement housing and associated entitlements.

Since this authorization expires with the fiscal year 1987 budget, the commission has proposed language to provide continuing authorization for carrying out the provisions of section 15. It has been estimated that approximately $80 million will be required to underwrite the cost of acquisition of housing for those individuals remaining to be relocated.

The proposed bill, approved by the Administration and forwarded to Congress by the commission, would provide a one time authorization in this amount. The proposed one time authorization for housing costs represents the Administration's acknowledgement that resources should be made available to complete the program. By authorizing the total amount to remain available until expended, it would be possible for the Administration and Congress to review, on an annual basis, the need for appropriations for replacement housing in accordance with competing governmentwide priorities.

The draft bill would also increase the total authorization for incentive payments. Subsection B of section 14 of the original act mandates incentive payments for individuals who voluntarily apply for relocation.

To date, the commission has paid approximately $6 million in incentive payments to 1,200 heads of household who have voluntarily applied and relocated. The commission is currently estimating an additional 1,400 heads of household to be relocated which will require approximately $8 million additional funding for incentive payments.

The commission is, therefore, proposing that the total authorization for this funding category be increased to $13 million. This amount is $5.3 million above existing authority and would provide sufficient funds to complete the program.

The commission is also proposing an addition to the existing discretionary fund program which was authorized by Congress in 1980. Under the proposed amendment, those activities which are in support of the commission's direct programmatic responsibilities would be funded in total by the commission rather than cost-shared with other entities.

Activities which would fall into this category would be largely of an infrastructure nature. They would address such items as range improvement; boundary surveys; road, water, and utility construction; and any other necessary infrastructure items.

Those activities which are of an indirect nature that are conducted by either the Navajo or Hopi Tribes or private organizations for the benefit of either tribe in meeting the burdens imposed by the Relocation Act would still require a 70 percent match from either Federal, State, local, or tribal governments or private organizations.

This change will allow the commission to meet the needs of the relocatees in a more direct manner and significantly assist the commission in meeting its responsibilities under the act.

Mr. Chairman, the Administration has not had time to analyze the amendments of Senator McCain. We will work within the Administration to produce our comments as soon as possible.

Thank you.

ATKINSON. Thank you very much, Mr. Chairman, for extending us that opportunity. We are most appreciative.

[Prepared statement of the Navajo and Hopi Indian Relocation Commission appears in the appendix.]

The CHAIRMAN. Thank you very much.

In your testimony, you indicated that at the time this measure was being considered by the Congress, neither the Administration nor the Congress had any idea as to the number of families or heads of household that were involved in this relocation. Is that correct?

Mr. ATKINSON. Yes, sir; that certainly is contained in the statement. I would like to qualify that, though, by stating that in our next paragraphs, we talk about the residency.

I sometimes feel that the number of families increasing from 1,000 to 2,600 was caused somewhat by that definition of residency. We reached that definition of residency, sir, with the solicitor of the Department of Interior, the Field Solicitor, and our own attorneys. Our interpretation of the definition was then confirmed by the General Accounting Office.

That is quite a long answer to a simple question.

The CHAIRMAN. Are you presently confident as to the number of people who remain to be serviced?

Mr. ATKINSON. I think we are as confident as one can be. I think we are confident. The only place that we may be really in error is in the number of families that are still out on the Joint Use Area who have, for reasons of their own and tribal traditions, et cetera, have not contacted the commission or allowed us to contact them.

I would stand by that figure, Senator.

The CHAIRMAN. With the amounts that you have recommended that we authorize, how many houses do you anticipate need to be built, whether on new lands or elsewhere, to complete this relocation? How many units are involved?

Mr. ATKINSON. Let me just ask one question of the staff.

We need funding, sir, for 1,200 more units.

The CHAIRMAN. And what is the average cost of this new house?

Mr. ATKINSON. Sir, we have two benefit levels, one for a family of three or less and one for a family of four or more. However, averaged out, it is about $66,000 per family for the home and all of the other items that go with it.

The CHAIRMAN. What is involved in the $66,000?

Mr. ATKINSON. Sir, let me again missed the staff if I missed one. What would be involved in that is the home, the moving expenses—I have been corrected, sir; it is just the average cost of the house. The staff tells me that the average cost per family for a relocation, including the bonus and the appropriations for the administration of the Relocation Commission, is approximately $75,000. That would be a high figure, Senator.

The CHAIRMAN. Are you confident that the proposed increase in the authorization from $15 million to $30 million will cover all that is necessary for housing?

Mr. ATKINSON. I believe it will cover the entire cost, sir, but that appropriation would be made for 3 years. So, summing that into $80 to $90 million, yes, sir, it would.

The CHAIRMAN. Are there any funds still remaining for incentive bonuses or have they been all used?

Mr. ATKINSON. We have received approximately $7.5 million for bonus. We have about $1.5 million left. We are asking for $5.3 million more.

The CHAIRMAN. Is it your testimony that, at this moment, there are 1,200 Navajo families residing in the Hopi Partitioned Lands?

Mr. ATKINSON. Senator, using the definition of residence in the legal manner which was established by the Government, yes, there are that many in residence. Actually out there physically occupying that land, Senator, there are probably roughly 250 to 280 families.

The CHAIRMAN. And in numbers of individuals, how many are there?

Mr. ATKINSON. I think, sir, that we generally use a figure of 5 per family or 4½. So, physically occupying that would be approximately 1,100 or 1,200 people.

The CHAIRMAN. And if I may have this repeated again, of those actually residing on the Hopi Partitioned Land, how many have applied for relocation benefits?

Mr. ATKINSON. Sir, we think that the number that hasn't applied is somewhere around 30 to 50 families which have not applied and would not talk to our field coordinators or appraisers.

The CHAIRMAN. Then, 30 to 50 have not applied?

Mr. ATKINSON. Yes, sir.

The CHAIRMAN. The rest have applied?

Mr. ATKINSON. Yes, sir.

The CHAIRMAN. Do you know any reason why they have not applied?

Mr. ATKINSON. Sir, I think that out of the 2,600, these are the people who have deep conviction of their own. Perhaps we were not capable of explaining to them or the Government wasn't or the Navajo Tribe wasn't, and they have reached the decision that they simply will not talk with or to the Navajo and Hopi Indian Relocation Commission.

The CHAIRMAN. I have many other questions, but I would like to now call upon Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I have a lot of questions, but I will submit some of them because of our time constraints here.

I would like to know, Mr. Atkinson—I have been advised and having visited there not too long ago that there are many potential relocatees who want to move to the Tuba City area. What are the plans of the commission to assist the host community of Tuba City in assuring that relocatees receive job training and that economic development is provided for the community?

Mr. ATKINSON. We have a policy of endeavoring to do whatever we can for a host community based on the number of people which they take and the present population of that host community. I think we are in excellent shape with regard to what you have brought up excepting economic development, Senator DeConcini.

Economic development on the reservation has a record that has to speak for itself with what has been done, but these areas—even though Tuba City is on a major highway leading from Arizona into Colorado, it still is somewhat isolated. To bring economic development there is going to be a very hard and difficult task or it would already have been achieved by the Navajo Tribe.

The Navajo rate of unemployment is extremely high and indicates that economic development——

Senator DECONCINI. Mr. Atkinson, excuse me for interrupting you. What specifically with the Relocation Commission be able to do for a community such as Tuba City as you get more people who want to move there.

Mr. ATKINSON. We will be able to help them with the pre-move counseling——

Senator DECONCINI. That is for the relocatee.

Mr. ATKINSON. Yes, sir.

Senator DECONCINI. How about the community?

Mr. ATKINSON. You mean what will we be able to do for the community itself to——

Senator DECONCINI. To get ready to accept them.

Mr. ATKINSON. Senator, we will use our discretionary funds for that in manners which the leadership of the Tuba City community and a tribal council person indicate what they would like. We will do anything and everything we can to assist that host community.

Senator DECONCINI. How much money is in the discretionary fund, more or less?

Mr. ATKINSON. I think we have a discretionary fund that has been capped by the Congress at about $6 million, sir.

Senator DECONCINI. It is $6 million?

Mr. ATKINSON. Yes, sir; but we will need that full appropriation for the discretionary fund to do those things, and it is very possible,

Senator, that in the effort to live up to what we feel are the obligations of the Government, that we will seek extra funds from this Congress.

Senator DECONCINI. Mr. Atkinson or anybody else on the commission, do I understand that your objective is to handle 300 to 400 relocatees a year now?

Mr. ATKINSON. That would depend on the appropriation. On $30 million, we can complete to about 400 relocations per year.

Senator DECONCINI. At $30 million. How much have you been getting, roughly, $22 million?

Mr. ATKINSON. No, sir.

Senator DECONCINI. How much?

Mr. ATKINSON. It has been $15 million, Senator.

Senator DECONCINI. At $15 million, how many have you relocated?

Mr. ATKINSON. At $15 million, we have relocated approximately 200 families each year in which we received the $15 million.

Senator DECONCINI. You relocated 250 families last year?

Mr. ATKINSON. Senator, 200 to 215 families. I am sorry.

Senator DECONCINI. Did you do 200 to 215 last year?

Mr. ATKINSON. I will give you the exact number, sir.

Senator, I am going to have to back up on what I said. We have not moved that many, and I was under the impression that we had. I think we have moved 190 families the prior year and this year have only moved 165 families but are committed to move another 35 families. We simply haven't been able to physically move them.

Senator DECONCINI. And you think with $30 million, you are going to be able to move between 300 and 400. Yet, with $15 million, at best, you have moved maybe 160. That is pretty optimistic, I would think.

Ms. MASSETTO. Well, Senator DeConcini, that partly depends upon where we are moving people. If we are moving people to off-reservation locations, the infrastructure is already available at the site, so the move is a lot easier. If we are moving people onto reservation, not onto the new lands, we have to do the infrastructure development which may involve IHS and other agencies. So, the process gets slowed down a little bit.

Senator DECONCINI. I will only ask one more question, Mr. Chairman, and submit the balance.

How many Hopi families have applied for benefits? I think it is 36. Is that about right?

Mr. ATKINSON. It is 24, sir.

Ms. MASSETTO. Certified.

Senator DECONCINI. That is how many have been certified.

Mr. ATKINSON. That have been certified, yes, sir.

Senator DECONCINI. And how many have been actually relocated?

Ms. MASSETTO. All but 2.

Senator DECONCINI. All but 2 of the 24? Are you sure about that?

Ms. MASSETTO. There are 10 that have not been moved.

Senator DECONCINI. There are 24 that have been certified, and 14 have been relocated and 10 have not.

Ms. MASSETTO. Right.

Senator DECONCINI. That always troubles me. I think and I hope the Chairman of the Hopi Tribe can explain. I thought he had indicated to us several times that the Hopis have all moved. That, obviously, is not the case.

Mr. ATKINSON. No, sir; they haven't. The accurate statistical record says that we have certified 24 families, relocated 14, and to be moved are 10. I think the impression was given to you, Senator, that all of the Hopi families had been relocated.

Senator DECONCINI. Which is not the case.

Mr. ATKINSON. It is not the case, sir.What may have been confusing are the commissions previous comments that all Hopi clients have moved from the N.P.L.

Senator DECONCINI. As a matter of fact, there are 12 that haven't even been certified. Are there not? Or may have been denied certification.

Mr. ATKINSON. Out of those Hopis that were denied——

Senator DECONCINI. Well, how many have applied? Do you have that figure? Was it 36?

Mr. ATKINSON. You are correct, sir; 12 Hopi families were denied.

Senator DECONCINI. Thank you, Mr. Chairman. I will submit the balance of my questions.

The CHAIRMAN. Thank you very much.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I want to thank the commissioners for being here today. Mr. Chairman, what plans for use of the Paragon Ranch has the commission made?

Mr. ATKINSON. Sir, all we have done on the Paragon is confer with the Navajo Tribe on the plans that they have, and they are far more able than we are to tell about the plans which they are developing to develop the coal lands that are underneath the Paragon.

Our true interest in that is assisting the Navajo Tribe in the development of that land in any way which they request and ensuring, as the law says, that the benefits from that land flow to the Navajo relocatees.

Senator MCCAIN. Would any of the other commissioners care to comment on that question? Ms. Massetto?

Ms. MASSETTO. Yes, Senator McCain. When Paragon was originally selected, because of the conflicting claims between the United States Government, New Mexico, and individual mineral lease holders, the commission took the position that we would allow the Navajo Tribe to bring together all of these interests and establish some sort of working capability with New Mexico in order to establish the power plant that had already been planned on those lands.

Throughout those negotiations, the commission has put heavy stress on the fact that we intend to see that those lands are for the benefit of the relocatees. In 1980 when the amending act was passed, there was a great effort on the part of the commission to get that additional acreage for the relocatees.

The fact of the matter is that as of today, we have no plans for relocating families to that area. We have, in the last 6 months, had discussions concerning the use of the Paragon Ranch resources for the relocatees.

One of the ideas that we had——

Senator MCCAIN. May I interrupt for a second?

Ms. MASSETTO. Sure.

Senator MCCAIN. I just want to make the record clear. The land was acquired for the purposes of acquiring additional land for the relocatees. Is that correct?

Ms. MASSETTO. That is correct. In fact, there was a lot of discussion on that at the time that the land was acquired that this would not generally be a Navajo piece of land. It would be developed for the purposes of the relocatees.

Senator MCCAIN. And so far, there have been no plans developed by anyone for relocatees to be placed on that land.

Ms. MASSETTO. That is correct, Senator.

Senator MCCAIN. How do you explain that?

Ms. MASSETTO. Part of the reason for the lack of use of moving people to that area is the fact that people just generally didn't want to move there. The other part was that as the coal is mined, people would have to be moved from one place to another so that really the only sites available for people to go to would be this community that, at some point in time, would be developed.

Well, it isn't developed yet, so there really isn't anyplace for these people to go to.

Senator MCCAIN. Whose responsibility was it to develop such a place?

Ms. MASSETTO. The commission's.

Mr. ATKINSON. I didn't hear that question, Senator.

Senator MCCAIN. I said, whose responsibility was it to develop that area so that relocatees could be placed there, and Ms. Massetto said it was the commission's.

Mr. ATKINSON. Sir, if any relocatees had requested to move to that land—I don't think we have ever had a relocatee family who did, we would honor that request. We move or relocate those families to a site of their choosing. If a family or an extended family had chosen to move to the Paragon Resources Ranch, sir, we then would have made the proper arrangements.

Senator MCCAIN. Well, may I ask, did the commission recommend the purchase of the Paragon Ranch?

Mr. ATKINSON. Senator McCain, the Navajo Tribe chose that, and the commission was overtly active in supporting the Navajo Tribe's request for the Paragon resources. There were many reasons for that.

In the original law, the Navajo Tribe was given the privilege of selecting 250,000 acres of BLM land in northern Arizona. They selected that 250,000 acres of BLM land, and then the Department of Interior or the Government would not give them the land which they selected.

So, we ourselves, these three commissioners, were not going to see that happen again to the Navajo Tribe. They were promised something in a public law and then not given it. So, when they selected the Paragon Resources Ranch, we used every resource at our command to enable the Navajo Tribe to obtain that land which they have.

Senator MCCAIN. Does that explain the fact that we purchased the Paragon Ranch for the purpose of providing a place for the re-

locatees and, to date, there have been no relocatees placed on the Paragon Ranch land? Does that sound too complicated? Is that the way——

Mr. ATKINSON. Yes, sir; that is very complicated. The law says that the relocatees will choose where they wish to be relocated, Senator, and we have adhered to that, not only because it was the law, but because of the trauma that exists for these families that have to be relocated. To have us move them to sites to which they did not want to move would have been improper both legally and morally.

So, had we had a concerted effort by the relocatees to move to the Paragon lands, we would have moved them there.

Senator MCCAIN. So, if the Paragon Ranch does not fulfill the goal for which it was acquired in that they were allowed 250,000 acres in order to have land for relocatees to locate on and it is not fulfilling that obligation, what should be done with the Paragon Ranch?

Mr. ATKINSON. Well, sir, it is my opinion that the Paragon Ranch has been acquired by the Navajo Tribe, and it is further my opinion that the Navajo Tribe will develop it as they see fit for tribal uses in keeping with their traditions and what they feel is the benefit to their families.

When they wish to do that with that land and they tell us what they want, we will give them our full assistance. I think that land, sir, was attractive in that it contained so many hundreds of thousands of tons of coal, and the Congress gave the Navajo Tribe the right to select that land whether it was coal land or whatever kind of land.

We have done our best and so has the Congress and the United States to live up to that agreement which has been done.

Senator MCCAIN. Well, the fact remains that it has not fulfilled the purpose for which it was acquired, and I don't see how you can deny that if it was acquired for relocatees and no relocatees are there.

Mr. ATKINSON. Well, Senator, with due respect to you, I don't agree with that statement.

Mr. WATKINS. Senator McCain, when I first came on the commission, my two colleagues were in the midst of beginning the Paragon acquisition for the Navajo Tribe, and I joined forces with them. One of the first things I did as a commissioner was ask to go see the Paragon Ranch of 35,000 acres which I did.

At the time I was up there and the people were guiding me around, they advised me that it wasn't that suitable for people to move onto. I don't know how many could move there. I can't give you a quote on that, but the main purpose according to the people who took me around up there was the millions of dollars of coal underneath.

Senator MCCAIN. Ms. Massetto.

Ms. MASSETTO. Yes; I would like to respond. First of all, the language in the act, Senator McCain, says for the benefit of the relocatees. That has been a phrase that has caught the attention of a lot of people and really doesn't have a specific definition.

It doesn't say only to relocate people on; it says for the benefit of the relocatees.

For a long period of time, we were told by Congress that the money for development, education, and broader programs that were really needed to carry out the relocation with any hope of its being successful would not come to us. So, we viewed the Paragon Ranch as a source that might be available to the relocatees for that particular purpose.

In the last couple of months, the commission has been discussing the manner in which the resources could be used. The reason it started at this point in time is that the Navajo Power Authority, New Mexico, and several private entities have finally signed a contract to go forward with that plan.

It was our thought that that money or the capability of using reimbursable loans from the United States Government could be put to use in developing not only just relocatee homes but, as Senator DeConcini pointed out, infrastructure for the communities that have been impacted by relocation. Relocation does not just impact a family. It has impacted communities. The western side of the reservation has long been under constrictive construction and development because of the land dispute.

We saw the resources at Paragon as an opportunity for developing the new lands and developing the communities on the western side of the reservation so that they could absorb and assist these families that were moving into the area. That is conceptually what we have been talking about with the Paragon resource potential, always understanding that the tribe, because it is a participant in that project, is putting in money and seeing that the rights of way are available, should have taxing authority, should have any moneys that were not needed for the benefit of the relocation and could be turned over to the general fund of the Navajo Tribe.

However, its primary purpose was to develop the infrastructure and do the economic development that is needed for the families. Congress has said we are not going to pay you to do it.

Senator MCCAIN. Thank you.

I noted that the commission did not have time to have any comments on the proposed amendments. I would like to request your thoughts on any or all of those amendments at this time. I don't know whether we will have another hearing before we mark up this bill, but I would certainly like to provide you with an opportunity to discuss any of the amendments that were sent to you last Friday in any way you would choose to do so.

Mr. ATKINSON. Senator McCain, that is very generous, and we would like that opportunity when we have had the time to discuss these with the Administration and OMB and come back and tell you the Administration's position on the amendments.

Senator MCCAIN. You don't choose to give any opinion from the viewpoint of the commission?

Mr. ATKINSON. No, sir; We are part of the Administration, and I personally will abide by the decision which they made today to ask for a delay in time to comment on it until we have had conferences on it and discussions.

With your permission, Mr. Chairman, I will ask Mr. Watkins if he wishes to make a personal opinion statement on this and then Ms. Massetto.

Mr. WATKINS. Senator, I will have to concur with the chairman. I was in Tucson last Friday and Saturday, and last Sunday, I came back here and was just able to get with my colleagues last night, and the time frame has just been too much. We couldn't handle it right now.

Ms. MASSETTO. Senator McCain, I will briefly make some personal comments, and they are personal. They are not the position of the Administration.

They are general comments that any undertaking to reorganize or affect the Relocation Act must be taken very seriously not only by the committee, but by the commission, the BIA, and the other political bodies that are involved in this relocation. The fact of the matter is that when the families back in Arizona hear that something is happening, it has a very traumatic effect on their lives. They get confused about it.

I would hope when the committee is proceeding in evaluating what it thinks will make the program better—because I think all of us here want that to happen—you cannot just isolate the commission itself. There are other problems related to this program that really need to be addressed.

Does not paying the attorneys their attorneys' fees really affect the resolution of the 1934 dispute? I believe in hitting the issues head on, and I think that the committee should very carefully consider all aspects of the relocation program when it is thinking about making changes, because I don't think year after year after year of changes is very helpful to the administration of the program.

Thank you.

Senator MCCAIN. Thank you.

I would just like to comment, Mr. Watkins and Mr. Atkinson, that it is the habit of the Armed Services Committee and the Commerce Committee on which I sit that any nominee for a commission or position that comes before the Senate of the United States, we always ask that nominee if he would be willing to give a personal opinion on any issue to the committee if called upon.

All of those nominees are always forthcoming, in the experience that I have had both here in the Senate and in the House, and I am sorry that you two don't choose to give your personal opinion at this time on the amendments, and if we do go to another commissioner, I can assure you that commissioner would commit himself or herself to providing a personal opinion on any issue that they are questioned about.

Mr. ATKINSON. Well, Mr. Chairman, Senator McCain, you have a great advantage, sir, in the knowledge of the proper things to say in front of a committee. This is probably the first time that we have ever sat before a Senate committee, Senator, that there have been this many Members here, and they have always been a little less formal.

I do not intend in any way, sir, to slight the Senate or in any way show anything but the utmost respect for you and your colleagues in saying that I have no personal position. I think the times I have been on the commission—we are part of the executive branch, Senator—I have tried to show an extreme loyalty, and I

think I have, to the Ford Administration, to the Carter Administration, and to the present Reagan Administration.

If my lack of statement is offensive, I do apologize to you.

Mr. WATKINS. Mr. Chairman, Senator McCain, it is apparent that I didn't make myself very clear. I was in Tucson at a board of regents meeting, Senator McCain, and I did not leave there until Saturday night, and I had to leave Sunday to come to Washington. I did not have your information, but I will make this statement.

If you will look at some of the statements I have made as chairman for three years, I have said over and over if you will please give us the money, we will go out of business, and those are still my sentiments. You give us the money, and we will quit this agency, shut it down.

Senator MCCAIN. Thank you, both. Just let me reiterate I meant my comments in no way as a criticism of the position you have chosen to take. I was pointing out that people who come before the Senate have always guaranteed committees on which I sit the assurance that they will provide their personal opinion when asked. If you don't choose to do so, that is certainly your privilege to do so.

Mr. ATKINSON. Well, Senator——

Senator MCCAIN. I don't want to beat the issue to death here, Hawley. I want to thank all three of you, and I appreciate the work you have done on behalf of the relocation effort.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much, Senator.

Because of the importance of the problem before us and the amendments that have been submitted by my two distinguished colleagues, I will now announce that the record will be kept open until the close of business of January 15 next year which should give all interested parties sufficient time to look over the measure, look over the amendments, discuss the matters with your colleagues in OMB and the Administration, and come forth with your analysis and your recommendations.

In submitting your views on the amendments, I would hope that in addition to the official Administration position, if you do have personal views, you would include them.

Mr. ATKINSON. That will be done, Senator.

The CHAIRMAN. Because the three of you have had more experience in this matter than any member of the OMB. They are completely divorced from what is happening out there, and you people have been there and you have lived with this problem for a long time.

We very much want to hear your personal views, not necessarily one from a bureaucrat who has never set foot in Arizona. So, we value your thoughts, sir.

Mr. ATKINSON. Thank you very much, Senator. They will be forwarded to you.

Mr. WATKINS. You are very gracious, Senator, and thank you. That will be done.

The CHAIRMAN. All of us have many questions we would like to submit to you for your careful consideration and response, but I have just a couple more now. One is on the quality of water.

This committee has received numerous calls and letters suggesting that the water in that area, particularly the Rio Puerco River, is contaminated and polluted by nuclear particles. Do you have any information to give us as to the quality of the water that is available to the people in the new lands?

Mr. ATKINSON. Senator, I think we do have. The wells which we are putting in with, of course, the Indian Public Health Service, are far deeper than the waters that flow in the Rio Puerco. We are not using any of that water for either residential, culinary, or stock purposes or for range purpose. All of the water that we are using has been and will be tested by EPA to meet the EPA regulations, and we think they will exceed them.

No decision will be made by us without the Public Health Service first telling us if that water is safe. I think the waters that flow in the Rio Puerco do have some contamination in them and we would be at fault for using those waters.

Ms. Massetto, would you like to comment on that?

Ms. MASSETTO. No; thank you.

The CHAIRMAN. Before proceeding, is it your testimony that the water that flows in the Rio Puerco is unfit for human or animal consumption?

Mr. ATKINSON. No, sir; that is not my contention. I know that those waters have some contamination in them today. What lies in the future for that degree of contamination I cannot know.

What I can assure you, though, Senator, and the members of your committee is that the water that we are supplying to relocatees is not from that source. It is from deep within the earth from other geological strata.

Now, I am not expert beyond that except to assure you, Senator, that the waters we are using and the wells we put down for our relocatee families and for their livestock has not been contaminated to any degree where it would be at all harmful to livestock or to individual families.

The CHAIRMAN. Will you give us a report as to the number of times the waters in the Rio Puerco have been examined and tested?

Mr. ATKINSON. Yes, sir.

The CHAIRMAN. And the number of times you have tested deep well waters?

Mr. ATKINSON. Yes, sir.

The CHAIRMAN. And the results of such tests.

Mr. ATKINSON. Yes, sir; that will be forwarded to you immediately.

The CHAIRMAN. Furthermore, will you advise us as to whether the results exceed or are less than the requirements set forth by EPA?

Mr. ATKINSON. Yes, sir.

[Material to be supplied appears in the appendix.]

The CHAIRMAN. With that, on behalf of the committee, I thank you very much for assisting us today. We will be submitting questions to you at a later date for your consideration and response.

Mr. ATKINSON. Thank you very much, sir, for the opportunity to appear before you and the graciousness which you have extended to us.

The CHAIRMAN. Thank you, sir.

Now, we have two very distinguished citizens. One is the Chairman of the Navajo Nation of Window Rock, Arizona, the Honorable Peter MacDonald, and the other is Chairman of the Hopi Tribe from Kykotsmovi, Arizona, the Honorable Ivan Sidney.

I would like to have both of you come up here, if you will.

For those of you who have said this is impossible, I want you to see the two chairmen sitting together. I expect that by 5:30 this afternoon, everything will be resolved.

Well, in order to make this very democratic, how about going alphabetically. Mr. MacDonald, M comes before S. It is good to have you here with us again.

STATEMENT OF HON. PETER MacDONALD, CHAIRMAN, THE NAVAJO TRIBE, WINDOW ROCK, AZ

Mr. MACDONALD. Thank you, Mr. Chairman and members of the committee.

I would like to express my sincere appreciation for having us here today to talk about one of the most important problems facing the two tribes. I know that the tragedy of relocation is something that we are talking about here, and we want to put an end to that.

I was told that a typical American moves once every two years. The families we are talking about in the 1882 area have lived on the same spot on the same piece of land for generations. The only way of life they know is what they are doing today, and they have been doing this for many years.

We of the Navajo Tribe have tried to bend over backwards to cooperate to work out something, even though we know the law is unjust. We have had numerous meetings with the commission. We had almost weekly meetings with the affected families.

We have had meetings with the BIA who are now over in the new lands, even though, in many instances, they say in one instance that they have jurisdiction and don't need the Navajo Tribe's approval and they can do whatever they want to. On the other hand, they say "Why don't you approve this, Mr. Chairman, before we go on." We constantly continue to fight over who has jurisdiction.

It got to the point where I even got a piece of paper drafted and said why don't we put our thoughts on this piece of paper as to how we are going to cooperate, because I feel very bad that the process of moving people from one place to another is happening without the Navajo Nation's input and involvement.

So, Mr. Chairman, I have prepared a statement which I want to submit to the committee, but I would also like to take a little time here to bring certain points home.

The CHAIRMAN. Mr. Chairman, may I assure you that you have all the time you need and want. I will be here all night, if you want me to.

Mr. MACDONALD. Thank you very much, sir.

The CHAIRMAN. I just cancelled a trip to New York for that purpose. May I also assure you that your full statement and that of Chairman Sidney will be made part of the record.

Mr. MACDONALD. Thank you. I hope that my colleague, Chairman Sidney, will be patient here while I just take things off my heart.

Mr. SIDNEY. Mr. Chairman, I will just make him nervous.

Mr. MACDONALD. You know, we are all talking about how it is that the relocation up to now, Public Law 93-531, has not worked. This is the 13th year that we have been trying to perfect this law. Today, we are here to talk about the reauthorization of the work of the commission.

I believe the performance of the Relocation Commission, however well intentioned they may be, has made a more terrible situation than we started out with earlier. I would like to briefly talk about that performance, since that is the key issue in evaluation of S. 1236.

Everything is so bad. I know that you members of the committee sense this just by listening to your questions and also hearing the responses from the commission. As you said earlier, Mr. Chairman, they are the people who have had the longest experience with this work.

They can't even give you a figure that they can agree upon as to how many people are really affected, what their needs are, where they are, what they are doing, what their problems are. It has been this way for a number of years, and I don't know that it is ever going to improve.

This makes me wonder how it was back in 1800 when we had no telephones and no way for Indians to come here and testify before the Senate or the House. You have people coming back here and telling Congress how bad the Indians were, what they are doing. Consequently, many bad laws were made.

Even with today's modern technology, we cannot get a clear answer as to how many people are involved here and what the costs are. So, it really bothers me that we are playing with the lives of many thousands of innocent people.

I have a great respect for the commission, Mr. Hawley Atkinson, Ralph Watkins, and Sandy Massetto. However, we all know that reports come in, some audits have been made which all goes to tell us that the work that they have been charged with has been "botched up," in the words of Congressman Yates.

So, to make this commission more efficient by amendments to this reauthorization bill is very important.

I could go on and say many things about some of the shortcomings and things that have really fallen through the cracks, but, basically, there is not enough planning. There is not sufficient time devoted to really understand what we are talking about here in terms of economic development, putting people in alien environments, and so forth.

The same is true with the BIA which lately entered into this program by trying to move people from HPL into so-called new lands. As I said earlier, they came in like gangbusters and said we are going to move Navajo, we are going to build houses, and are going to put them in there.

And they did. They built a house, they put the road in, and discovered that they forgot to look for water. So, after they built the house and the road, there was no water nearby that house and that

road. The ended up beginning to drill all around and ended up finding a water source maybe five or six miles away.

This is the kind of action that is going on, Mr. Chairman and members of the committee. So much activity is going on without proper coordination, without proper planning where people are suffering and people are hurting. I, for one, would like to end this human suffering.

With respect to the amendments, S. 1236, I welcome the opportunity to testify on this bill and the amendments recently offered by Senator McCain. I want to commend Senator McCain for recognizing the need for drastic reform for the commission. I would like to also commend you, Senator Inouye, for holding this hearing.

We the Navajo Nation support the recognition that is highlighted in S. 1236 that more needs to be done to fund the housing so urgently needed. Many people have been moved off the HPL and are still waiting for years.

Senator McCain proposes to add language to the bill to greatly alter the way in which relocation is conducted. Overall, these are very positive amendments.

I would like at this time to address certain aspects and offer some suggestions for improvement from the Navajos' point of view.

We definitely support the long-needed accountability provision. The idea of a single commissioner has great merit, so far as I am concerned, and someone suggested that this commissioner's term or tenure be renewed on a certain time basis. That is very good, too. That way, you can hold someone accountable for the work that they are supposed to be doing.

However, I have some concern that the new commissioner will be under the Secretary of Interior. I will come to the reason I have that concern.

If the commissioner is to be under the Secretary of Interior, then it must be understood that he be completely insulated from all other departmental pressures. The commissioner needs to be completely separated from the BIA. Our main concern here is that funds that would normally be appropriated to the Navajo Tribe are being diminished to pay for this relocation program. That must stop, because you are just robbing Peter to pay Paul, and we can't allow that.

The idea that reports be made to Congress is also a very good idea, especially the requirement for the second report. I believe the amendment asks that a report be made within 6 months and then that another report be made within 12 months to report on the economic development plan and the funding needs for what has to be done. That is very important. We need to have a long-range plan for these people.

I have no problem with the elimination of Federal funding for legal fees for litigation. I know this hurts both tribes, but perhaps this will be our contribution to the national problem of trying to fight the deficit.

In the long run, we support the suggested changes, particularly in the Bennett freeze area. Since 1966, the Navajo and Hopi tribes have tried to negotiate a number of things in that area, and it has been very, very difficult to agree without having many of the

things which are needed for health, emergency, and public purposes.

For instance, the Tuba City airport saw a terrible tragedy a couple of years ago, because we don't have a safe airport, and there is a large Indian Health Service hospital there. The airport is within the Navajo Administrative area, but it is very inadequate. They evacuate patients out of there almost every day and every night, and we cannot improve the existing airport or even go outside that area to have a very usable airport for everybody.

These are the problems in the Bennett freeze area. So, the idea that the newly appointed commissioner can make decisions to free up some things that are for the public good is beneficial. The airport is going to be used by both the Navajos and the Hopis and by anyone who wants to use it, but because the two tribes cannot come to an agreement, by law, we have not been able to do anything about the airport at Tuba City.

Yet, as I said, 2 years ago, we had an airplane crash and were trying to evacuate patients out of that area.

So, the amendment in that area is very important for the alleviation of some of the suffering that goes on at the present time.

These amendments to the law, S. 1236, can only go so far, and I want to commend the committee for that. But I submit that the amendments do not go far enough. It really bothers me to see the continuing bits and pieces kind of approach that it is taken continually sending new people down there, whenever, somebody says, give me the job. I will get those guys. It is like Kitt Carson back in the 1860's said I will get rid of those Navajos or any number of those people coming out to the West and giving the impression that they are going to do this kind of thing.

Yet, this is a real human problem. If we are really interested in solving this problem that faces my brother, Ivan Sidney, his people, and myself, if we really want to put an end to hardship and strife, then we need to go a step further.

These amendments, as I said, are good and serve a purpose, and they are badly needed, but we must do more. A lot of people focus on housing. This is not a housing project. The BIA would like to tell you how it is that they built some houses and that this is a housing project.

This is a human problem, and I would like everyone working on this to view it as a human problem, not a housing project.

So, that brings me to my remark that the basic law that we are talking about, Public Law 93-531, must be changed to reflect what we have learned over the past 13 years since the enactment of the law and put an end to all of these sufferings. Too many people are hurting. Too many people are dying because they are not able to find a way out of the situation in which we have put them.

This is not so much a tribal government versus a tribal government as it is people problem. There are people, individual families, living out there, traditional families in rural areas. In many instances, there is no electricity. The only thing they know is to herd the sheep, to go gather wood, to bring water in and make their own way the best they can.

These are the people that we are talking about. They are now trying to exist the best way they know how and save their culture on the land on which they have lived for years.

S. 1236, as I said, we support, but it does not address the 1934 litigation, the 1882 litigations, or the 9,000 or so Navajos now being affected by the Bennett freeze. It does not address the potential claims coming that may be in now against the Navajo from the San Juan Paiute and the fact that there are and will continue to be a number of families who simply will not move. These families have said so, and I am sure the Relocation Commission and the BIA will attest to that. They have said they are not going to move, even at the point of a gun.

So, without major change to Public Law 93-531, the tragedy of relocation will continue and not only continue, but will continue to grow, and we may be here for another 15 or 20 years continuing to talk about why and who didn't do what.

So, I pray, Mr. Chairman and members of the committee, that Congress will realize what a needless tragedy has been inflicted on some of the most innocent residents of our country. I hope and pray that Congress will resist the temptation to ignore these afflicted people and turn instead to make justice out of injustice.

We recognize that the Hopis have a claim. We don't deny that, but we also say that Navajos have a claim, too.

I, for one, say let's settle it in a way that is humane. Let's not continue to honor property rights to the exclusion or even destruction of human rights.

Even animals being lifted out of their own environments and put into a zoo are not put into a dry place without any water, without any food. We know that when the deer is out in the woods, by their nature, they look for water and they look for shelter and a place to eat. When you lift that deer out of its environment and put it over here on the streets of Washington and put a fence around that animal, that animal does not know where its waterhole is, where its shelter is, where its food is.

That is the same situation we are facing here with these traditional Navajos. These are the things that disturb me. As you said earlier, Mr. Chairman, this week the eyes of the world are focused on Washington, DC as the leaders of the two greatest superpowers meet to discuss arms control and human rights. We have before us today a human tragedy of horrendous proportions. In our own country, we are being told that human rights—the right to practice religious traditions, the right to earn a living and support oneself, the basic right to safe and decent shelter—must take a back seat to property interests.

Mr. Chairman and members of the committee, we have the power to end this tragedy together. I implore you to work with me in bringing this shameful chapter in our history to a just conclusion consistent with compassion and human rights.

Thank you very much.

[Prepared statement of Mr. MacDonald appears in the appendix.]

The CHAIRMAN. I thank you very much, Chairman MacDonald. As always, you are very eloquent.

I would like to now recognize the distinguished Chairman of the Hopi Nation, Chairman Sidney. Welcome, sir.

STATEMENT OF HON. IVAN SIDNEY, CHAIRMAN, THE HOPI TRIBE, KYKOTSMOVI, AZ

Mr. SIDNEY. Thank you.

Chairman Inouye and Senator McCain, I bring you greetings from the Hopi people.

Mr. Chairman, I am very much encouraged by your remarks about what is happening here in Washington today and that any issue, no matter how difficult, can be resolved. A lot of times, we are all affected by issues that are subject to laws. We as Americans are law-abiding citizens. However, at times, laws are difficult for some of us, but they are something we enjoy in our democracy. I feel inspired by what is happening in Washington that we can move forward and resolve an issue that has been around a very long time.

Mr. Chairman, I want to congratulate you and your staff on your effort to visit both the Navajo and Hopi Nations. You have personally talked to the people affected.

Senator McCain, I want to congratulate you as well as Senator DeConcini, our two Senators from Arizona, on what you are trying to do to help resolve this issue.

Mr. Chairman, I believe the Hopi Tribe also has been afflicted by tremendous hardship, a hardship that has been felt for many years, many years beyond the coming of other tribes, which is supported by many documents in many museums in this country. I believe that up to today, we have recognized what has happened. We have stood on the position that the law is the law, but it is a law that we can work with.

I have a lot of older people on Hopi, and these elders come to me and say we must repeal the law so we can get all of the Hopi lands back. It is very difficult for me to explain to them that to repeal the law, we are going to talk about all of the Navajo lands, including the 1868 treaty reservation, and I don't think this Congress or anyone else would want to displace all the Navajos off of what they call their reservation today.

We have lost a lot of land, but we must continue. We have the future in front of us.

Mr. Chairman, you stated that the best people to resolve this issue are both tribes, the Hopi and the Navajo. I can take your time, Mr. Chairman and members of this committee, and the time of the American public to tell you what hardships we have on the Hopi Reservation, what laws the Congress passed, not just the relocation law, but any legislation passed here will cause some hardship on the Hopi.

There are the difficulties of the cuts in the Federal programs. I can talk to you about hardships, but isn't that what we are elected for? Is it not what I as the Chairman have the duty to do, to be the speaker or convey the bad news as well as the good news?

I think if we take that spirit, then certainly a lot of our problems will be resolved.

Senator McCain, I believe, knows very well that the Hopi Tribe has attempted to recognize the hardships of Navajos awaiting relocation. People across the nation thought that July 6, 1986 would be a day of violence, that Federal troops would be needed, that the

Hopi Tribe would go out and pick up Navajo elders and displace them.

I stand proud today that that did not happen, because we look across and recognize that we are all human, that there are the civil rights of people.

In the last two years, the Hopi Tribe has not filed any kind of law suit in Federal court or any court. In fact, we have changed lawyers. In fact, we have asked our lawyers how many law suits we have today and if some of those law suits are duplicative.

I would rather spend the money we have today to send young Hopi to school. I believe that record stands today that we want to continue to go forward.

I would like to see Congress call upon the two tribes and say, don't come to us until you resolve the issue. On some of those issues, you may have to bring us together, but as long as one of us has an avenue to come here and change the law, the Navajos are going to take that opportunity. With that opportunity, they are not going to be very much committed. It is one thing to say in words what we are going to do—it may become political rhetoric—but it is another thing to go and actually do what we are supposed to be doing.

Senator McCain, you are to be complimented in your efforts for offering these amendments. We as the Hopi Tribe have supported the Federal Relocation Commission, because that is the only avenue that is open to us to utilize the lands that have been restored to us, a portion of our lands. It is unfortunate that we have gone to the Federal courts, because the courts have been the only avenue to recognize our rights.

I see these amendments as a way to expedite relocation, recognizing the rights of these people and their hardships. It is an avenue that will permit Hopis to enjoy the land restored to them and less of an expenditure of money. It is very difficult for us to not support that.

I have also comments on the legal services contract. I think it is a good idea to expedite this whole issue and that the attorneys of all parties involved recognize that we have a duty to see the completion of the relocation.

I must say here today, Mr. Chairman, that the Hopis' position is we are awaiting the people to be relocated, those that are physically living on the Hopi Partitioned Land. Earlier, someone asked about the numbers. We had 36 Hopis apply for relocation. Of those, 24 were certified, 14 have moved, 10 are waiting to move, and 12 have been denied. Part of the 12 we assisted their denial by having them qualify for the HUD projects on the reservation.

On reports to Congress, I would like to offer that it may be a good idea that instead of the commissioner alone reporting to Congress, both tribes should report to Congress on where we stand and what our status is. If I am in some way impeding the law from being carried out, the Hopi Tribe should be notified as to how we can assist and complement one another. I feel it would be very important that both tribes report to you as well as the commissioner.

Again, the law calls for infrastructure—roads, water, schools, economic development, job opportunities. That is fine. I stand on the position, however, that it is our responsibility.

I was honored to be in the same city and the same room three weeks ago signing the renegotiated contract with Peabody Coal that would bring more revenue to both the Navajo and the Hopi for the coal that we own jointly as a result of this land dispute. In signing that, I feel confident that will be used for such matters as well.

Hopis who are to be relocated have all been relocated. With that experience, I find that no one here in Congress or anywhere else can assist the Hopi people better than the Hopi people themselves.

I feel I have not seen that from the Navajo Tribe during my 6 years as chairman. I have seen tremendous effort for the Navajo administration's position that they are totally against relocation. However, I find Navajos who are willing to move. I meet with them. I visit them. I talk to them. In some cases, we have improved the life styles of Navajos while awaiting relocation.

I had 12 Navajo elderly women in my office last year in August. They were in my office asking me why they could not get water from a windmill. This windmill was erected three years ago out of restoration monies for Hopi Partitioned Lands. They could not get water there because the windmill head was gone.

Upon my inquiry, I responded to them that the reason the windmill was not working was because it was subject to vandalism. We could not continue to repair the windmill, and I said to them that if you assist us, tomorrow we would have the windmill in place. And that happened. We have not heard about any vandalism of that windmill to date.

That is what I mean by assistance, how we can talk to one another.

In the Bennett freeze area, I am prepared today if that hospital needs that airport, Chairman MacDonald, I am willing to say I am in agreement. Let's do it. If they are talking about moving it somewhere else, then I question what the real intent of the purpose of that is, because any improvements put more of the justification on the claim for the party that is making the improvement.

Chairman MacDonald, 2 weeks after you were elected in November last year, I recall your comments in Colorado at that time that we are going to court. I took that to mean I will see you in court.

Well, let's expedite that. The quicker we go to court, the better able we will be to let life continue for both tribes.

Earlier, Senator DeConcini asked a question about movement of Navajos to the Tuba City area. I have questions on that, again, simply because the 1934 issue is not resolved.

Senator McCain, again, for the record, we are very much in support of improving the existing airport to make it safe to assist the hospital. It was very unfortunate that we lost Vice Chairman Stanley Honanie 1 week ago. He was at that hospital. So, it brings it home to us when we need the improvements.

If these amendments are going to be done for other purposes, then the Moenkopi area people tell me that in the last several years, there has been an influx of Navajos moving to the Tuba City area, and a lot of them are coming from the eastern and the western part of New Mexico.

There are two ways that are protecting Moenkopi from being overrun by Navajos today. One is that both tribes have to agree on

any improvements. Secondly, there is the legal avenue, but if there is going to be this amendment, then it takes away our being able to hold on until that case is decided.

As far as the attorneys' fees are concerned, I believe that the Hopi Tribe has gone on record to look at our attorneys' fees and to try to expeditiously move forward. If the income and resources are the same as the Navajo Tribe, then I think I would agree with Chairman MacDonald, but we don't have the resources that he does. If we are to pay for our legal fees, if this land issue is to be continued throughout the next several years, the Hopi Tribe will become bankrupt.

I don't think that is the intent of Congress or your intent, Senator McCain, but it is something worth looking at. It is something to look at to expedite this issue so that you and I can be very proud of our State of Arizona in that it has so much to offer.

Chairman Inouye, I feel in some respects that, as a small tribe and a humble one, we have one advantage in being a neighbor to one of the largest tribes, the Navajo Nation. If we are able to resolve this issue, we can join with them in the many opportunities that lie ahead for Indian people.

In your words, we are all a minority, and we don't have the luxury of disagreeing among ourselves. It brings us home. There is so much to enjoy, but we have this case to prevent us from stepping together. We cannot say, because I have a small tribe, that my defense is on my small tribe or Chairman MacDonald says because his is the largest tribe.

If we are going to get issues resolved, we need to do it together, and I feel today that we can walk out of here as better people. Through both of your interests, Chairman MacDonald, can we agree here and now in front of the committee that we both agree that the existing airport at Tuba City will be improved? I am prepared to give that approval today, and if we do it today, that is an accomplishment. I hope we can go forward.

Mr. Chairman and Senator McCain, I am encouraged by your willingness to move forward. I was criticized by Hopi people when I began my talks with the Navajo chairmanship, but I feel right is right, and right is going to prevail, and it is going to do it with people like yourself and the chairman of this committee. We must go forward.

Thank you for inviting us to offer our remarks. Mr. Chairman, my remarks are very preliminary. I was able to bring a few members of the Hopi Tribal Council with me. We can discuss it and will submit more statements for the record, but it is an opportune time to be encouraged that this avenue is to move forward. We certainly will enjoy that.

If we can come to an agreement on such an airport for Tuba City for the needs of the Navajo and Hopi, that is quite an accomplishment, and maybe we can enjoy the press that is here for the two nations which also came to some kind of an agreement.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Sidney appears in the appendix.]

[Material to be supplied appears in the appendix.]

The CHAIRMAN. I thank you very much, Chairman Sidney.

When I opened the hearings this afternoon, I anticipated a long, drawn out, several decades' path toward a solution, but I am convinced after hearing your testimony and that of Chairman MacDonald that the solution is within our grasp. For one thing, both of you have been inundating my distinguished friend from Arizona with accolades and commendations. Ordinarily, I would pick up the questioning at this point, but if the solution is in the McCain hand, I yield the floor to Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman, and thank you for your kind remarks.

I again echo the opinion of the two chairmen that your leadership on this issue and so many others is of the utmost importance. We have great confidence that you will continue your commitment to this issue as well as so many others.

I would also like to congratulate both chairmen on very eloquent and compelling statements. Both of them, obviously, come from the heart. Both of those statements come from years of experience and years of suffering on behalf of the people of both their tribes, and both of them, I believe, display a commitment to try to resolve this issue which is very important and can possibly give us some room for optimism.

Chairman Sidney, would you let the Hopi people know of the sorrow that we all feel at the loss of your vice chairman, Mr. Honanie, who was of a very young age. I believe he was 42, and the loss of his leadership will certainly be felt.

Mr. SIDNEY. Yes; thank you.

Senator MCCAIN. I would like to, if I could, Mr. Chairman, do something a little unusual here since this is obviously a very unusual hearing and perhaps go a little further around the area that the chairmen were discussing concerning a possible resolution of this entire issue. I admit that I am treading on very dangerous ground here.

Both chairman, I know, are aware of the involvement back in 1985 of Mr. Richard Morris at the behest of Mr. Clark who had been appointed by President Reagan to try to seek a solution and some kind of agreement on this whole issue. I believe that both of you are familiar with the memorandum that was submitted in September of 1985 from Richard Morris to William P. Clark concerning the issue.

I thought it was as succinct and clear a description of the problems as they exist as any that I have ever read, and let me just quote to you one paragraph that I thought pretty well summed it up. Mr. Clark said:

> We stated earlier that our mission was to determine whether an agreement could be effected between the tribes, and we noted that an agreement would not be possible should either tribe deem it not to be in its best interest to negotiate with the other. We also noted that there were but two bases for negotiations designed to relieve the burden of relocation: land exchanges and permissible living arrangements for Navajo on Hopi lands.

Are you in agreement, both of you, that perhaps that is basically the two bases for negotiations as they might exist, one is land exchanges and the other might be permissible living arrangements for Navajos on Hopi lands as opposed to the alternative that we are

going through now of the Relocation Commission? Chairman MacDonald, would you agree with that?

Mr. MACDONALD. I would agree with the statement, Senator, yes. There are a number of families right now just frozen in the HPL area. We must permit them to remain there. Otherwise, as they have stated, they are not going to move.

For that, we are willing and have expressed our willingness to have land exchange with the Hopis so that we don't shortchange the Hopi Tribe.

Mr. SIDNEY. Senator McCain, relocation, even though whatever we discuss with both tribes, relocation has to continue because there are existing contracts today, and there are those who want to move. Secondly, it is very difficult for me to agree with—as of today, the Hopis do not want to exchange lands or sell their lands. However, they have not said that we are not willing to discuss issues, particularly with the hardships and the older people involved.

However, as an elected leader of the Hopi in a tribe that recognizes the power of the people, before the Hopis will sit down and discuss any issue, we must see a good faith effort from the Navajo people or, more particularly, the Navajo leadership. There are certain laws that have not been looked at.

This law stated that there will be rental fees paid to the Hopi Tribe. That has not been fully complied with. If those were complied with, maybe there would be a better atmosphere for us to discuss issues and Hopis willing to sit down and discuss matters that come before them.

Senator MCCAIN. Would you agree, Chairman Sidney, that we will reach a time or should reach a time when there will be a certain number of families, as you said, older people who have the attachment to the land which is impossible for any non-Indian to truly understand and appreciate—that we will reach a time when some accommodation should be made for those people? I am not describing now many there are nor where they are located, but do you think that is a realistic situation?

Mr. SIDNEY. That is true, Senator. There will be a time, and the Hopi people through their traditional leadership have asked that the Navajo leadership meet with them, and we have been waiting for the last 1½years.

Senator MCCAIN. Could I finally ask if the two chairmen would be willing to sit down in the presence of or the absence of Chairman Inouye, myself, Chairman Udall, or anyone that you would choose or not choose to have at least a way of opening communications between the two chairmen?

Mr. MACDONALD. I, for one, would like to do that. Obviously, he and I can talk for four or five days, but need someone there who can listen and have the ability to moderate. Otherwise, we can each dig in various areas. If we are going to get the job done and end this tremendous problem that has been hanging over the two tribes as quickly as possible, then I would suggest that that be tried. I am willing to try that.

Mr. SIDNEY. Senator, although in this country when you want something from an individual who owns something, you normally go to them, at this day and time, I really don't want anything from

the Navajo Tribe. They want something from me, and I have been there, and I have expressed that I am willing to talk. I have even gone to Window Rock. I was in Window Rock even this weekend at a high school dedication and was hoping that Chairman MacDonald would take that opportunity to talk to me.

Certainly I am there, and although I have a lot of respect for Chairman Inouye and his invitation to be there on any discussions, I feel we would be that much further ahead if the two chairmen would come together and talk, and then when we meet with you or the committee, we will have already discussed issues, and I am certainly available for that.

Senator MCCAIN. Let me make sure I understand. You would be willing to talk—and I am not saying agree—with Chairman MacDonald under circumstances in which perhaps in a framework that we could discuss at a later time. Is that an accurate depiction of what you are saying?

Mr. SIDNEY. Yes, Senator. I would be glad to do that.

The CHAIRMAN. Will the Senator yield?

Senator MCCAIN. I would be glad to, Mr. Chairman. I think that is a significant concession on both chairmen's part, because I would like to point out for the record that there are members of both tribes who do not want the two chairmen to talk for various reasons. Both take enormous political risk—we as elected people can understand that— by simply agreeing to sit down and talk. So, I am very appreciative that they would make this move.

Thank you, Mr. Chairman.

The CHAIRMAN. I am pleased to announce that after the hearing, I have invited the two chairmen to meet with me. I would like to ask you to join us and Senator DeConcini. We will be meeting in SH-722 Senate Hart Building. Can you join us?

Senator MCCAIN. Yes, sir.

The CHAIRMAN. We will not resolve the questions at that time, but if we can just get together and you can tell us what we can be doing to assist you, it would be extremely helpful.

I am sorry to interrupt, Senator.

Senator MCCAIN. I have no more questions. Thank you.

The CHAIRMAN. Well, obviously, we have many things that we agree upon. You agree upon the amendments that have been submitted by Senator McCain, and I can assure you that this committee and the staff will work on the amendments very carefully.

Second, your discussions on Tuba City fascinate me. I realize that Tuba City is now within the freeze zone. If you two can agree upon the necessity of improving that airport, I can assure you that this committee will, without hesitation, move towards that end right now.

Mr. MACDONALD. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. MACDONALD. I want to thank Chairman Sidney for making the very kind gesture of allowing the Tuba City airport to be improved.

The Navajo Tribe has gone to FAA to improve that runway within the administrative area. That runway we have now is inadequate and, we were told, is very dangerous. FAA will not approve

that unless we move it outside the administrative area and into the 1934 area, and that is where we have a problem.

I hope that Ivan Sidney, Chairman of the Hopi Tribe, can agree that wherever the runway is acceptable for the FAA, within the Navajo administrative area or outside in the 1934 area, is acceptable with him.

Of course, within the administrative area, we don't ask for Hopi approval, because that is Navajo administrative area. That is where the air strip is, but we were told by FAA that that runway is dangerous. They won't allow any improvement on there unless it is moved out of the city limits which is outside the administrative area where there is more level ground, and that is within the 1934 area, and I need Chairman Sidney's approval on that.

The CHAIRMAN. Chairman Sidney, assuming that the FAA's assessment of the situation is correct, would you go along with that?

Mr. SIDNEY. Certainly hearing, Mr. Chairman, if FAA may have some recommendations, I believe it is an issue that we can talk about, and it is something on which we would like to offer our recommendations as well.

Mr. Chairman, I stated earlier that in the 1934 area, the Bennett freeze area, it takes both tribes to agree. We have instances where we have been notified of our consent on projects after they are already being implemented. Certainly, that is when we oppose the issue.

However, if we are involved from the beginning and if it is for the health and welfare of the project, I don't see why we would not support such an action. I would like to have issues resolved there and not be brought here because of our inability to agree.

We would like to come forward with our recommendations to accommodate that request.

The CHAIRMAN. Senator McCain and I serve on the Aviation Subcommittee which has jurisdiction over the FAA, and I am on the Appropriations Committee that provides the money for the FAA. So, if you wish, we would be very happy to arrange a meeting at the earliest possible time for the two chairmen to meet together with the appropriate officials of the FAA to resolve this matter. Whatever you decide, Senator McCain and I will endorse. How is that?

Mr. SIDNEY. Mr. Chairman, every time Chairman MacDonald goes to any part of the other Navajo Reservation surrounding us, he lands at Polacca airport. So, maybe since you are both on the committee, we can also talk about that.

The CHAIRMAN. Are you people available next week?

Mr. MACDONALD. Any time, sir.

Mr. SIDNEY. Yes, sir.

The CHAIRMAN. We will arrange for a meeting with appropriate officials of the FAA to meet with Chairman MacDonald and Chairman Sidney.

Well, I think we are ready for the signing of the treaty. Just give us a few more days.

Until then, on behalf of the committee, I thank you very much for your presence here and for your words of encouragement. I am personally very much encouraged, and I am now convinced that the solution is in your hands, not in our hands, and we stand ready

to serve you in expediting this agreement and to do whatever we can to bring this about.

If the first step is Tuba City or the new airport, so be it. We stand ready to help you. So, thank you very much.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. And we will be meeting with you in a few minutes.

Mr. SIDNEY. Yes, sir. Thank you.

The CHAIRMAN. Our final witness is the man in charge of the Bureau of Indian Affairs and the Assistant Secretary of the Department of the Interior, the Honorable Ross Swimmer.

Mr. Secretary, it is always good to see you, sir.

Mr. SWIMMER. Thank you, sir.

The CHAIRMAN. What do you think? Do you think the Hopis and Navajos will resolve their problems?

Mr. SWIMMER. Sir, since I have to work with both tribes very closely, I would defer my answer to that and wait and see what happens. I would rather not offer an opinion at this time.

I do appreciate the efforts that this committee has shown and its willingness to try to bring the two tribes together and try to work out a solution.

Mr. Chairman, I do have a statement for the record as well as endorsing the statement that was submitted earlier by the commission. I would like to have those submitted, if I might.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. SWIMMER. I would like to make a few comments about the work of the Bureau of Indian Affairs in this project.

As this committee knows, the Bureau of Indian Affairs was not an active participant in any way in the relocation effort until shortly after I came on board almost 2 years ago. Maybe that was for the best.

I think that the commission has had an extremely difficult challenge from the Congress to carry out. It hasn't been easy. There have been changes on the commission, and there have been changes in staff. This has gone on an awful long time. As was mentioned earlier, the premise of having a few hundred families to move turned out to be a mistake, and there has obviously been a much greater burden than what was anticipated in the very beginning.

The role of the Bureau of Indian Affairs in this came about partially as a request from me and a request from the Congress that we get involved through the budgetary process. We were provided in our budget approximately $20 million to provide some housing construction assistance with the relocation effort at the time that the commission was provided with a like sum of money, but because of authorization limits, it was split between BIA and the Navajo and Hopi Relocation Commission.

In talking with some of the congressional staff at the time involved in those appropriations, I was given the impression that our mandate was to go to the Hopi Partitioned Land and move the Navajo families that were left and that we would be afforded the new lands that had recently come into the ownership of the Navajo Nation and that that would be a suitable place to relocate them.

Various plans were being developed at the time to build what were called rural communities, some forms of tract housing, in fact. I was greatly concerned at that and chose to take that opportunity to review the whole subject of the relocation from the law and the passage of the law and the background of it to where we were at that time.

I must say I was greatly disturbed that all of the people in the Government and the two tribes were unable to come up with a solution 12 or 13 years ago that didn't involve the movement of hundreds of families. In looking at the complexity of it, I don't know that there was another way of doing it either, but I did know that given the trauma that had already taken place, there wasn't an easy solution now and that perhaps completion of the task was something that would work even better if it could be done properly.

My major concern—and I hope it is not reflective of the commission's attitude; I don't believe it is—as I looked at the project at that time, 1½ years ago, was what effort had been made to the individual families living on the Hopi Partitioned Land to make them aware of the law, to make them aware of their rights as individuals, and to make them aware of any opportunities that were available, to explain the whole process to them.

The commission's work was one of voluntariness. The law that was passed said that people will be moved voluntarily, and the commission set up the proper offices and the counselors to entertain people who came to those offices to talk about relocation.

However, there wasn't, in my opinion, a very concerted effort to go onto the reservation and to meet with the people, particularly the Navajo people who lived on the HPL. Before I confirmed that opinion, I went to the HPL and spent some time there, and I visited in three distinct areas, in areas where people had already been moved, in areas where there were so-called resistors, and in areas where we believed the people wanted to move.

I found quite a bit of information that supported my earlier opinion that people were really uninformed, that people really didn't understand what the situation was and what their rights and responsibilities were and what the liabilities were.

We took on, then, the effort of counseling with the people on the HPL. We signed a memorandum of agreement with the Navajo-Hopi Relocation Commission. We shared the resources of the commission as well as some of the appropriated money that the Bureau of Indian Affairs had.

I brought in a professional person to head up the counseling effort that had done a considerable amount of this kind of work in other places of the world as well as a lot of work in Indian country. She put together a team of Navajo social workers, and they have worked continuously now for a year and a half in visiting several times with every family, at least every family that would let them, and there were some families where there was a lot of hostility and

it was impossible to visit the families. The visits were being made by invitation, and we were not going into a family's home unless we were invited.

The counselors managed to visit 90-plus percent of all of the families on the HPL several times. One of the reasons for this was obvious, just to find out who was there. But the more important reasons were to find out the situation, the life styles, the needs, and the concerns of those people who lived in those hogans and those homes around the reservation so that as we planned the development of the new land, it could be planned in a way that was consistent with improving the life style and not degrading the life style of the current residents of the Hopi Partitioned Lands.

It would be very impractical for us to simply go down and build 200 homes and say here it is, move into it. It has been stated by both chairmen, particularly Chairman MacDonald, that the life styles of the Navajo at western Navajo and particularly in this area of the HPL is different from anything most of us would ever understand.

I would say that in the time that I have been involved—and this has been almost on a monthly basis of my visiting in areas associated with the new land or on the HPL—that I don't fully comprehend the life style or the mind set of the people and their needs and wants. I think that the counseling staff has come much closer to this understanding and has done a much better job than could have been expected in determining what the needs and wants and desires are of these people.

So, as we began our development of the new land, it was a slow process. It wasn't one where we simply went in and struck at it with roads and started building fences here and there.

We let the people of the Hopi Partitioned Land become a part of the planning process. We took people from the Hopi Partitioned Land to the new land for site visits so they could see all of the new land, and then we let them help us develop what are now called range units. We let them help develop where the homes could be located and the configuration of those developments that were going to house the Navajo people.

As we have built homes on the new land, we have fully involved the people that were going to live in those homes in the design, the construction, and the living within those homes to the advising about utilities and water, livestock, and everything that would be necessary.

One of the early commands that I gave to our area office was that as range improvements were made on the new lands, I insisted that those people who were being relocated be offered the first opportunity at those jobs, and that has happened. So, we have been able to provide interim jobs and work for some of those people who have been coming down to the new land from the HPL so that they would become acclimated to the land, learn its contours, provide and participate in putting up fencing, and earn some money doing it.

We know we have a lot of Navajo people of traditional life styles and many that are grazing families. They have sheep, cattle. We had to make provisions for range units and for livestock water, and these things are extremely expensive when you are developing

350,000 acres of land that is going to be occupied by a few hundred people.

However, I think that the cost in the long term will be worthwhile, and it will ease the burden of the Federal Government in working with the people who will be on the new land for years to come.

We believe that the development of the new lands will enable several hundred families to have life styles compatible with what they are coming from. We believe that everyone who is situated on the HPL now will be able to have a life style to what they enjoy now and that they will be worked into that life style and not at ours.

I believe that there will be a need for some agreement between the two tribes when the process is over for those people who cannot either mentally or physically move from their present locations on the HPL. Presently, we have 54 families who have not made a decision on whether to move. They are not necessarily resistors. Some of them are simply waiting to see what their alternatives are.

The quicker that the two chairmen could come together and determine an alternative, whether it is a small acreage, whether it includes some kind of grazing opportunity, a lease from the Hopi, a lease paid for by the Navajo to the Hopi, whatever arrangements might be made—and I have taken this up with both chairmen and asked them to think about this—that would go a long way in determining the exact number of families what will be left on the Hopi Partitioned Lands, and it would be, I anticipate, somewhat less than 54 families.

The other families we have talked to have selected places they would like to live. They are either on the new land, on the large Navajo Reservation, or they are off the reservation.

The commission's work will be to assist in locating those people who want to move off the HPL if it is not on the new lands.

Our work has been exclusively with the residents of the HPL. We have not been working with the 1,200 or so that are determined eligible and are living someplace else. It has been with the people who are currently resident, because they are the ones who were originally there, they are the ones who have remained there through these 12 years, and, for the most part, the ones who still have livestock permits.

Our work in that regard has led us to the new lands where we have been almost exclusively working on the development of the new land.

I endorse the work of the commission. They have a hard job to do. They have a lot of work ahead of them.

There might be alternatives to paying the obligation of the Federal Government or satisfying it to the 1,200 people who are not living on the HPL, but as far as the people living on the HPL, it is essential that we find them adequate housing and a suitable life style so that they can continue living in a manner that is satisfactory to their way of life currently.

With that, I would be happy to entertain questions about our work or give you comments on any of my observations on this project.

Thank you very much, Mr. Chairman, for the opportunity to share some of my thoughts with you.

[Prepared statement of Mr. Swimmer appears in the appendix.]

[Material to be supplied appears in the appendix.]

The CHAIRMAN. Mr. Secretary, you have heard reference to the so-called McCain-DeConcini amendments. Have you had an opportunity to study these amendments?

Mr. SWIMMER. We have had an opportunity to review them very briefly. As the commission stated earlier, we have not been able to achieve an Administration position on the amendments, although they are still being discussed between me and the commission and the Office of Management and Budget and the Justice Department.

The CHAIRMAN. Will you be ready to provide us with your position by January 15?

Mr. SWIMMER. Without doubt, we would come up with an Administration position at that time or before then.

The CHAIRMAN. I have been asked by Senator McCain and Senator DeConcini to submit questions to you for your consideration. So, if we may, we would like to submit them to you for your study and response.

Mr. SWIMMER. Certainly.

The CHAIRMAN. Well, I think it has been a good day, Mr. Secretary. Earlier, I thought this was beyond solution, but I think it can be done. With your help and the help of the commission and with the guidance and leadership of our two leaders, I am certain we can do it.

I stand ready to work with you to assist the two nations in bringing about a solution.

Mr. SWIMMER. Thank you, Mr. Chairman.

I think the issue of the relocation is virtually solved as far as being able to provide for the people who are left. I would encourage the committee's work and the chairman's work on the 1934 issue. That is one that has literally a stranglehold on both of these tribes and is preventing the development and improvement in jobs in the Tuba City and the Moenkopi area. The quicker that we can arrive at a negotiated solution without relocating people, the better it will be for all people concerned out there.

I guess if I were asking you or the two chairmen, I would ask that whatever solution we come up with that it not include a relocation of people, regardless of who winds up owning the land.

The CHAIRMAN. I think having gone through one exercise with relocation should be enough to convince us that that is not the path to follow. So, I think your words are very wise, sir.

With that, I would like to thank all of you for participating in today's hearing and adjourn with the thanks of the committee.

[Whereupon, at 6:07 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF SENATOR DENNIS DeCONCINI

ON

S. 1236 : NAVAJO-HOPI RELOCATION HOUSING PROGRAM REAUTHORIZATION

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

DECEMBER 9, 1987

MR. CHAIRMAN, THANK YOU FOR DEVOTING THIS COMMITTEE'S TIME AND RESOURCES TO ADDRESS A MATTER WHICH IS VERY IMPORTANT TO THIS SENATOR AND THE STATE OF ARIZONA. I KNOW THAT YOU HAVE A COMMITMENT TO RESPOND TO THE CRITICAL NEEDS OF THE NATIVE AMERICANS. I WANT TO EXPRESS MY GRATITUDE FOR YOUR OUTSTANDING LEADERSHIP ON THIS AND OTHER MATTERS.

I ALSO WANT TO WELCOME A NUMBER OF PEOPLE FROM ARIZONA WHO ARE HERE TO PRESENT THEIR COMMENTS ON S. 1236 AND SUGGESTED CHANGES IN THE STRUCTURE OF THE RELOCATION COMMISSION. AS I HAVE SAID MANY TIMES CONGRESS CREATED THE MOST DIFFICULT TASK IMAGINABLE WHEN IT MANDATED THE USE OF RELOCATION TO SOLVE A DISPUTE OVER LAND BETWEEN TWO INDIAN TRIBES. BY ENACTING PUBLIC LAW 93-531: THE NAVAJO-HOPI INDIAN RELOCATION ACT, CONGRESS LAID THE RESPONSIBILITY FOR IMPLEMENTING THE RELOCATION PROGRAM UPON THE THREE MEMBER COMMISSION WHICH WE NOW HAVE.

UNFORTUNATELY, NO MATTER WHERE OR HOW A FORCED RELOCATION PROGRAM IS CARRIED OUT, IT IS THE MOST DIFFICULT JOB YOU CAN ASK ANYONE TO DO. TO [redacted] MY GREAT DISMAY [redacted], OUR EXPERIENCE IN THIS CASE IS NOT MUCH DIFFERENT. THERE ARE MANY PROBLEMS WHICH HAVE DEVELOPED IN THE COURSE OF THE EFFORT TO CARRY OUT THE LAW. A LAW WHICH IN THIS SENATOR'S JUDGEMENT IS NOT A HUMANE LAW. THE BURDEN OF THE UNJUST SITUATION CREATED BY THE LAW FALLS HEAVIEST ON THOSE WHO ARE CLOSEST TO THE SITUATION -- THE FAMILIES WHO ARE FORCED TO MOVE AND THOSE WHO ARE CHARGED WITH THE RESPONSIBILITY OF HELPING THE FAMILIES TO MOVE.

I HAVE ARGUED FOR A CHANGE IN THE BASIC LAW. I HAVE INSISTED THAT THE FAMILIES WHO ARE AFFECTED BE TREATED WITH THE UTMOST SENSITIVITY. I STILL BELIEVE THAT THE BEST RESPONSE TO THE PAIN AND SUFFERING OF THE FAMILIES IS FOR CONGRESS TO ENACT A COMPREHENSIVE AND FINAL SETTLEMENT. A SETTLEMENT WHICH RESOLVES THE 1882 AND 1934 DISPUTES WITHOUT FORCING PEOPLE TO GIVE UP LANDS WHICH THEY HAVE LIVED ON DAILY FOR HUNDREDS OF YEARS. I AM STILL CONVINCED THAT OUR MORAL OBLIGATION TO THESE CITIZENS OF OUR COUNTRY DESERVE NOTHING LESS THAN THE MOST HUMANE TREATMENT.

I WILL CONTINUE TO PUSH FOR THAT KIND CHANGE. IN THE MEANTIME, IT IS IMPORTANT FOR US TO CONSIDER SOME NECESSARY CHANGES IN THE WAY THE COMMISSION IS ORGANIZED. I DO NOT BELIEVE THAT THE RESPONSE TO THE DIFFICULTIES ASSOCIATED WITH RELOCATION IS TO INCREASE THE AMOUNT MONEY AUTHORIZED FOR HOUSING AND INCENTIVE BONUSES. I DO NOT THINK THAT HAVING MORE MONEY AVAILABLE WILL MEAN IMPROVEMENT IN A PROGAM WHICH HAS BEEN RIDDLED WITH PROBLEMS. NOR DOES IT MEAN THAT THE JOB WILL BE COMPLETED SOONER.

INSTEAD, I FEEL THAT CHANGES ALONG THE LINES SUGGESTED BY THE PROPOSED AMENDMENTS PRESENTED BY SENATOR McCAIN ARE WORTH CONSIDERING. I HAVE SOME OTHER CHANGES WHICH I WOULD LIKE TO SUGGEST. FOR EXAMPLE, I FEEL THAT THE COMMISSIONER SHOULD HAVE A SET TERM. I SUGGEST THAT PERHAPS LEGAL FEES FOR THE LAND DISPUTE LITIGATION OUGHT TO STILL BE COVERED BY THE FEDERAL GOVERNMENT BUT WITH SOME LIMITS. I EXPECT TO CONSULT WITH BOTH TRIBES AND OTHERS ON ADDITIONAL CHANGES WHICH MAY IMPROVE THE RESTRUCTURING OF THE COMMISSION.

I WANT TO EMPHASIZE THAT NONE OF THESE CHANGES ARE BEING CONTEMPLATED WITH THE INTENTION OF BLAMING THOSE INDIVIDUALS WHO HAVE DONE THEIR BEST TO MAKE A BAD LAW WORK FOR THE TERRIBLE SITUATION WE ALL HAVE TO GRAPPLE WITH NOW. I INTEND TO DO EVERTHING POSSIBLE TO SEE THAT THOSE WHO HAVE COMMITTED LONG HOURS OF WORK AND HAVE HAD TO LIVE WITH DIFFICULT DECISIONS REQUIRED BY LAW ARE NOT SUBJECTED TO PUNITIVE TREATMENT. WHILE I DISAGREE WITH THE LAW I WILL SEE THAT EVERYONE IS TREATED FAIRLY.

THANK YOU , MR. CHAIRMAN, FOR ALLOWING ME THIS TIME TO SHARE MY THOUGHTS AND I WILL HAVE QUESTIONS AS WE MOVE ALONG HERE.

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

IN APPEARANCE BEFORE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS. IN SUPPORT OF AUTHORIZING LEGISLATION FOR THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION.

HAWLEY ATKINSON	CHAIRMAN
RALPH A. WATKINS, JR.	VICE CHAIRPERSON
SANDRA MASSETTO	COMMISSIONER
CHRISTOPHER J. BAVASI	EXECUTIVE DIRECTOR
MICHAEL J. MCALISTER	DIRECTOR, MANAGEMENT
FRED CRAFT	GENERAL COUNSEL
PAUL M. TESSLER	LEGAL COUNSEL

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

STATEMENT OF HAWLEY ATKINSON, CHAIRMAN

RALPH A. WATKINS, JR. AND SANDRA L. MASSETTO, COMMISSIONERS

Before the Senate Select Committee on Indian Affairs
In Support of Authorizing Legislation for the
Navajo and Hopi Indian Relocation Commission

Mr. Chairman, we appreciate the opportunity to appear before the Committee today to provide our comments, and answer any questions, regarding the Commission's proposed reauthorization. We are also prepared, and at the Committee's pleasure, would like to present a briefing on the Commission's past activities, current status, and future plans for completion of the relocation project.

When the legislation establishing the Navajo and Hopi Indian relocation program was enacted in 1974, Congress estimated that 1,000 families would be affected by the partition of the Executive Order Reservation of 1882. If that number had been accurate, the Relocation Commission would not be here today. By June 30, 1986, the Relocation Commission had completed the relocation of 1,024 families, thereby completing the estimated number of relocations within the timeframe established by Congress. There were, however, as of July, 1986 an additional 1,638 certified eligible families remaining to be relocated. This, obviously was one and one-half times the original estimate of families who would be affected.

The Relocation Commission has been asked repeatedly to explain the reasons for the differences between the estimated number of families to be relocated and the actual number of families certified for relocation benefits. Although the Relocation Commission has provided this information to various Committees of Congress, and the Navajo Tribe and Hopi Tribes, we would like to specifically address the issue today for it is essential in understanding the need for reauthorization.

Neither the Congress not the Executive Branch did an actual enumeration of the families residing on the disputed lands before the Act was passed in 1974. One of the Relocation Commission's first tasks, after forming and staffing the agency, was to initiate an enumeration of families on the disputed lands, based on the census data provided by the Bureau of Indian Affairs.

The Relocation Commission was confronted with a number of problems in accomplishing an accurate identification of individuals living in the disputed area. The disputed lands of the 1882 Reservation consist of approximately of 1.8 million acres. The area is relatively remote. The partitioned lands are accessible primarily by means of unimproved roads. Actually locating individuals in this vast rural area, with a low density of population was, therefore, difficult. The Relocation Commission used aerial photographs and made direct contact with individuals, tribal officials and trading post employees.

The most significant problem after contacting individuals was obtaining the required information from them. Even though the Relocation Commission used interpreters, it was difficult to translate into Hopi or Navajo the concept of relocation. Some people were aware of the land dispute and the possibility of relocation, but the enumeration brought the harsh reality of having to move, to the individual. Individuals were reluctant to talk to enumerators because they feared the loss of livestock, the loss of land and the separation of family members by relocation. In some instances, individuals refused to speak with us. In other instances, information about persons who were absent on the day of the interview was generally withheld. Gradually, individuals began to understand the relocation program and began to apply for relocation benefits. The total number of applications received is 4,449. We estimate that there are thirty to fifty additional families who are living on the Hopi Partitioned Lands who have not applied for relocation benefits.

Another factor contributing to the additional numbers of families entitled to benefits under the program centers on the definition of residence. Congress directed the Relocation Commission to provide benefits to, and

relocate, those heads of household residing on the wrong side of the partition line. Congress, however, did not define the term "residing" but delegated that responsibility to the Relocation Commission.

Congress did provide the Relocation Commission with specific directives in developing the relocation program. Senate Report 93-1121 mandated that relocation be "thorough and generous". Public Law 95-531 required that the relocation plan..."take into account the adverse social, economic, cultural and other impacts of relocation on persons involved in such relocation" and "...be developed to avoid or minimize, to the extent possible, such impacts."

The Relocation Commission and its Attorney, in consultation with the Department of Interior's Solicitor, determined that the term reside, meant "legal residence" rather than "physically occupying". The Commission requested the GAO's review, in 1978, and they concurred in writing with this legal interpretation. The Commission met frequently with the Office of the Field Solicitor and Deputy Assistant Secretary of the Interior in the formulation of its early regulations and definitions. The Relocation Commission and all the other parties involved believed that this definition of residency took into account the intent of Congress and the problems of the people in the former Joint Use Area.

Public Law 93-531, and subsequent amendments, provided authorization for the Navajo and Hopi Indian Relocation Commission. The law, as amended, provided not to exceed $15,000,000 annually, from Fiscal Year 1983 through 1987, for the purpose of carrying out the provisions of Section 15. This section addresses the actual acquisition of replacement housing and associated entitlements. Since this authorization expires with the Fiscal Year 1987 budget, the Commission has proposed language to provide continuing authorization for carrying out the provisions of Section 15. It has been estimated that approximately $80,000,000 will be required to underwrite the cost of acquisition of housing for those individuals remaining to be relocated. The proposed bill, approved by the Administration and forwarded to Congress by the Commission, would provide a one time authorization in this amount. The proposed one time authorization

for housing costs represents the Administration's acknowledgement that resources should be made available to complete the program. By authorizing the total amount, to remain available until expended, it would be possible for the Administration and Congress to review, on an annual basis, the need for appropriations for replacement housing in accordance with competing government wide priorities.

The draft bill would also increase the total authorization for incentive payments. Subsection B of Section 14 of the original Act, mandates incentive payments for individuals who voluntarily apply for relocation. To date the Commission has paid approximately $6,000,000 in incentive payments to 1,200 heads of household who have voluntarily applied and relocated. The Commission is currently estimating an additional 1,400 heads of household to be relocated, which will require approximately $8,000,000 additional funding for incentive payments. The Commission is, therefore, proposing that the total authorization, for this funding category, be increased to $13,000,000. This amount is $5,300,000 above existing authority and would provide sufficient funds to complete the program.

The Commission is also proposing an addition to the existing discretionary fund program which was authorized by Congress in 1980. Under the proposed amendment those activities which are in support of the Commission's direct programmatic responsibilities would be funded in total by the Commission, rather than cost-shared with other entities. Activities which would fall into this category would be largely of an infrastructure nature. They would address such items as range improvement, boundary surveys, road, water and utility construction, and any other necessary infrastructure items. Those activities which are of an indirect nature that are conducted by either the Navajo or Hopi Tribes, or private organizations for the benefit of either Tribe in meeting the burdens imposed by the Relocation Act would still require a 70% match from either Federal, State, local or Tribal governments or private organizations. This change will allow the Commission to meet the needs of the relocatees in a more direct manner and significantly assist the Commission in meeting its responsibilities under the Act.

The Commission is also proposing an addition to the existing discretionary fund program which was authorized by Congress in 1980. Under the proposed amendment, those activities which are in support of the Commission's direct programmatic responsibilities would be funded in total by the Commission, rather than cost-shared with other entities. Activities which would fall into this category would be largely of an infrastructure nature. They would address such items as range improvement, boundary surveys, road, water and utility construction, and any other necessary infrastructure items. Those activities which are of an indirect nature that are conducted by either the Navajo or Hopi Tribes, or private organizations for the benefit of either Navajo or Hopi Tribes, or private organizations for the benefit of either Tribe in meeting the burdens imposed by the Relocation Act would still require a 70% match from either Federal, State, local or Tribal governments or private organizations. This change will allow the Commission to meet the needs of the relocatees in a more direct manner and significantly assist the Commission in meeting its responsibilities under the Act.

Mr. Chairman, The administration has not had time to analyze the amendments of Senator McCain. We will work within the administration to produce our comments as soon as possible. Thank You.

TESTIMONY OF THE NAVAJO NATION

Before the Senate Select Committee on Indian Affairs

Hearing on S.1236

Reauthorization of the Navajo-Hopi Indian Relocation Commission

December 9, 1987

Peter MacDonald, Sr.
Chairman, Navajo Tribal Council
Window Rock, Navajo Nation (AZ) 86515

Senate Bill 1236, with amendments proposed by Senator McCain, takes the first step necessary to address the problems that have been visited upon the Navajo people since the passage of P.L. 93-531 in 1974. The bill addresses some of the institutional problems that plague the Navajo and Hopi Indian Relocation Commission, whose sole reason for existing is to implement P.L. 93-531. These comments in the most part support S.1236, as amended. However, they should not be construed to mean that the Navajo Nation is embracing P.L. 93-531. To the contrary, we feel that the issues which S.1236 attempts to remedy are symptomatic of the underlying problems that plague P.L. 93-531. As a result, while we support most of the principles contained in S.1236, we feel that it only addresses one of the shortcomings of P.L. 93-531, namely the operation of the Relocation Commission. It is imperative that this Congress as a whole, and this Committee in particular, review the rationale behind P.L. 93-531, in light of the lessons we all have learned since its passage.

It is impossible to move ahead on this sensitive issue without reviewing the ground that has already been traversed. Why was P.L. 93-531 passed? What have been its impacts? More importantly, what have been its failures?

The stated purpose of P.L. 93-531 was to effect a "final settlement of the conflicting rights and interests" in the land disputes between the Navajo and Hopi Tribes. A review of the initial legislation, its subsequent history, and the litigation it has engendered shows that it has had the exact opposite effect, serving to exacerbate an already tense situation between the two tribes and turning the government's solution of relocating traditional Native Americans into a national and international disgrace.

Using any yardstick, the results come out the same; as your colleague Congressman Yates said less than two years ago, "the Commission has botched the job" of relocation. Changes in the structure of the Relocation Commission, and its mode of operation, are long overdue. Instead of being a forceful advocate for the families that are faced with the trauma of relocation, the Commission for years has sat idly by while unsuspecting relocatees were taken advantage of by unscrupulous individuals preying on their innocence.

It is interesting to note the Relocation Commission's position when it comes time for reauthorization. The Commission contends that doubling its appropriation will solve its problems. If this was an agency that had been in business for over ten years and was considered effective in its operations, an increase in funding would probably be in order. But as we all know, the reviews, whether by congressional investigating committees, independent outside observers or the individuals directly impacted by the Commission, are the same: This is an agency that has done a poor job of carrying out its responsibilities. I will not repeat the shortcomings found by past investigators, but I would like to point out examples of continuing problems we see today.

As you know, the Navajo Nation has a legal services program, located in Tuba City, Arizona, which assists Navajo relocatees in obtaining their benefits from the Relocation Commission and in other legal matters. Staff attorneys at the program are in a unique position to observe the direct delivery of services to the individual relocatees. They inform me that the problems we have seen in the past with faulty housing construction by contractors and incompetent inspection by the Commission continue to appear today.

In one recent instance, a home being built for a relocatee was inspected periodically and approved by the Commission staff. When the individual went to move into his new home, however, he discovered that the concrete floor was so unlevel that furniture placed near the wall leaned forward into the room. Other problems were discovered, including rodents entering the house through a hole in the foundation, numerous leaks in the plumbing due to failure to use adhesive between pipes, and inadequate insulation. In all, there were almost 30 construction defects. Needless to say, the house had to be practically rebuilt from the floor up. The Commission has spent at least $75,000 in repairs, effectively doubling its original cost.

In another instance, a builder was paid by the Commission but he abandoned the project with one home left roofless and the other not even started. A second contractor who was brought in to complete the roofless home has also performed shoddy work. The Commission has refused to complete the home that was not started, arguing that the relocatees should sue the original contractor, even though the Commission picked him and fully controlled his performance under the contract. As a result, one elderly couple has been living in a 10' x 15' shed without water and electricity for over a year waiting for their home to be completed. The other family is without a relocation home altogether.

These incidents occurred in 1986 and 1987, not a few years ago when the Commission was new to the housing construction process. If these obvious defects are "slipping by" in the construction and inspection process, how many latent defects must also exist in the relocation homes. Those latent defects will require continuing repair work in years to come.

In addition to these major problems, many of the relocatees have warranty problems with their new homes. The relocatees and their attorneys have found that contractors are often inadequately bonded and that the Commission staff is reluctant to force contractors to complete warranty work. At times it appears that the Commission is more interested in protecting the contractors than in pursuing the interests of the relocatees.

Senator McCain's proposed amendments to the Commission's structure should go a long way toward avoiding such problems in the future. Given the time needed to remedy problems with past performance, we feel this is not the time to double the Relocation Commission's spending level.

It is important at this juncture to clarify an oft-repeated misconception concerning the Navajo Tribe and relocation program. It is a common litany heard from both the Relocation Commission and the Bureau of Indian Affairs that the Navajo Tribe is "dragging its feet" thereby drawing out the relocation process. Let's get the facts straight. Over 4000 Navajo families have applied for relocation benefits. To date, only about 1200 families have actually been relocated. Since its inception there has not been a year when there has been a shortage of Navajos waiting for the relocation benefits promised them. On the other hand, The Navajo Tribe provides specialized services, including legal assistance, housing assistance and other social services specifically tailored for individuals affected by the Relocation Act. The Navajo Tribe does not like the Relocation Act. It is a poorly conceived statute that is having a devastating impact on thousands of Navajo families. However, the Navajo Tribe has consistently contended that if the law is to be carried out, it must be done in its entirety, not on a piecemeal basis. The Relocation Commission, and more recently, the BIA, has not seen fit to do so.

They have come to view relocation simply as a housing program, to be completed by moving a group of individuals, in this case Navajos, from point A to point B. The Navajo Tribe's insistence that the affected families receive the full range of benefits and services that were intended and enumerated in the Settlement Act, does not justify charges that it is uncooperative and recalcitrant.

The Navajo Tribe supports the proposed amendments which would alter the current number of Commissioners from three to one. This change should help make the agency more responsive to the needs of its clients. We would recommend that the Commissioner be subject to periodic reappointment to ensure increased accountability.

One of the principal concerns that has been raised over the years by the Navajo Tribe, relocatees and others is the lack of a long-term plan. S.1236 attempts to tackle this problem. By requiring two plans over a 12 month period, the possibility exists that the comprehensive planning that was intended prior to the initiation of any relocation will finally take place. The second plan, which will specifically address employment training and economic development needs, is essential considering the devastating effects that forced livestock reduction and the destruction of the traditional Navajo extended family structure has had on the economic condition of relocatees.

The second plan also requires the Commissioner to provide water, roads, sewers, community facilities and health facilities to serve the needs of relocatee households. However, it appears from the proposed amendments, that the Commission is to utilize existing federal programs to accomplish those goals. Several factors point out the necessity to earmark sufficient additional funds for the completion of these aspects of the relocation

program. It is no secret that there is a limited amount of funding available for all federal Indian programs. Congress has created this relocation nightmare with its attendant expenditures. It is unjust to expect other Indian programs, whether they be Navajo, Hopi or others, to suffer budget cutbacks in order to fund the expenditures necessary to implement P.L. 93-531. The federal government must provide the necessary additional funds to adequately implement the solution to this federally created problem.

It would also be helpful to clarify, and assure, that these services apply to all relocatees, including those that have previously relocated.

The Navajo Tribe supports the proposal in S.1236 to remove the Bureau of Indian Affairs from the relocation process. Congress correctly concluded in 1974 that an agency other than the BIA had to be established to develop and manage the relocation program to "avoid any repetition of the unfortunate results of a number of early official Indian relocation efforts." That is particularly true where, as here, the relocation involves two distinct Tribes with divergent interests. As a trustee, the BIA cannot serve two masters. And as we have seen, the BIA has used express or implied coercion in other areas where it exercises control over the Navajo Tribe to garner acquiescence to its efforts in the relocation program. By ending the BIA's involvement in the relocation program, these conflicts can be ended. However, by placing the Office of Navajo and Hopi Indian Relocation under the Department of Interior, care must be taken to insure that the relocation program, and funding therefor, remains separate from the BIA and the Assistant Secretary for Indian Affairs. The transfer of current personnel involved in the relocation effort from the Bureau of Indian Affairs or the Relocation Commission payroll to that

of the new "Commission" will send the message that as far as relocation is concerned, it is business as usual; significant personnel changes at least in high level staff must be made.

S. 1236 proposes to make some long overdue changes to the so-called Bennett Freeze. It is unconscionable that Congress has allowed this inhumane and unjust situation to continue for over twenty years. The question that inevitably surfaces is, if the parties were not Native Americans, would Congress or the courts permit such an outrage? The answer is clearly no. Forcing thousands of Navajo people to live in overcrowded, unsanitary conditions where they are prevented, by statute, from obtaining such universally accepted conveniences as running water, electricity and flush toilets is inhumane.

The amendments to S.1236 attempt to change this. While granting to the Commissioner the authority to waive the freeze in certain circumstances, S.1236 does not go far enough. As written, the amendments appear to prohibit all new housing construction. As currently interpreted by the U.S. District Court, new construction is permissible if the construction is an addition to an existing structure, or repairs or replaces an existing structure that is dilapidated or has been destroyed. The wording of the amendment appears to eliminate these much-needed replacement structures. This section should be revised or clarified to permit new housing in these situations and also where increases in family size have resulted in overcrowding.

P.L. 93-531 authorized the Secretary of Interior to pay, subject to the availability of appropriations, attorney's fees incurred as a result of these disputes. This situation has only served to encourage litigation, rather than

negotiations, between the parties. This should no longer be permitted to continue. By eliminating the payment of attorney fees, the parties stand a much better chance of resolving these disputes between themselves.

On the whole, the Navajo Tribe feels that S.1236, as amended by Senator McCain's proposals, is a positive first step. It is definitely not, however, the last step that will be needed. This bill serves to focus attention on a law which was ill-conceived from the outset.

The assumptions under which the law was originally passed have not proven true. The law was initially expected to initiate a short-term program which would have required the relocation of a mere 775 Navajo families at a total projected cost of $16 million. Instead, the program, like the splitting of an atom, has mushroomed into a succession of failures which have stripped thousands of innocent Navajo families of their traditional way of life. To date, Public Law 93-531 has cost the federal government over $200 million, over twelve and one-half times the initial anticipated cost, yet relocation is less than half complete. According to Relocation Commission figures issued in October 1987, 1,224 Navajo families have been relocated from the HPL; another 1,424 Navajo families have applied for relocation benefits but have yet to receive benefits. Another 1,764 Navajo families were denied relocation benefits, many of whom have appealed the denial of their applications.

Under the law, the Relocation Commission was to "assure that housing and related community facilities and services such as water, sewers, roads, schools and health facilities" were provided to the relocatees "at their relocation sites". As we have seen, the Commission has made a mockery of the assumption that this relocation program would be thoroughly planned out in advance.

The law was supposed to adequately provide for the relocatees so that the "adverse social, economic, cultural and other aspects of relocation" would be minimized. That requirement has not been met. For the more traditional families, the majority of whom do not read and write, sheepherding was their principal source of income and the focal point for the spiritual and social values inherent in their Navajo culture. The law mandated that these families reduce their livestock to a small fraction of what they had subsisted upon. Stable families broke up because parents could no longer afford to support their children. Government welfare has in many cases taken over the role of the extended family.

The construction freeze has prevented adult children from building homes near their elderly parents and grandparents. Every initiative to improve one's living conditions has been scrutinized by the Hopi and BIA patrols sent out to watch the people. Suicide, contrary to Navajo traditions, has struck many extended families. Those who have survived are changed forever. For many, both physical and mental health have seriously deteriorated.

To date, there are 1,224 Navajo families who have relocated. The outlook for these families should be optimistic. After all, they are principally young Navajo families, many with high school educations, some with college degrees. They decided early to try relocation. A large percentage chose to move onto other parts of the reservation where extended family members could provide a homesite for them. Many moved onto Navajo Partitioned Lands where they had close relatives; however, their sheer numbers have taxed the local

economies. Economic opportunities to replace the herding economy which they were forced to abandon are virtually non-existent on-reservation. Off-reservation relocatees have also seen widespread hardship. Because of inadequate counseling and other relocation related problems, many have lost everything.

Over 1,424 Navajo families who applied for relocation benefits as long ago as seven or eight years remain unserved. They must choose between remaining at their homes on the HPL in overcrowded or substandard housing and moving off the HPL as refugees to either the 1934 Statutory Freeze Area or wherever else short-term accommodations are available. Today approximately 285 Navajo families have homesite leases on the Navajo reservation and are certified for relocation, but have yet to receive their relocation homes.

Another 1,764 Navajo families have been denied relocation benefits. Some are college students or men and women who were in the armed services when the relocation program began. Although the law does not recognize their right to benefits, many of those families remain dislocated as a result of this law, forever prohibited from returning to their traditional homelands.

Finally, there are the 300 to 800 families, some of whom have never applied for relocation benefits and some of whom have applied for benefits, who now say that they will not relocate. Those families stand to suffer the most if the threat of forced removal is carried out.

The original law was also seriously defective in that it dealt with a real property problem in a way which is entirely unprecedented in modern times -- by relocation. Recent legislation involving land claims by other Native

groups, such as the Alaska Native Claims Settlement Act, has uniformly resolved claims by monetary payment. Removal of the non-Indian citizens of Washington, D.C., for example, on the ground that they were found to be living on land which rightfully should belong to Native Americans, would be a laughable suggestion. Yet Public Law 93-531 is identical in purpose and effect. Such outrageous discrimination would be thoroughly condemned in any other situation, but was deemed a "reasonable" solution to the so-called land dispute by Congress in 1974. It is, on the contrary, an unjust law which has caused untold human suffering and senseless cultural devastation.

Although the Navajo Tribe has basic problems with the original law, much has happened since 1974. We acknowledge that outright repeal of the law is no longer the most productive way to resolve the problems it created. Some changes in the law will be essential, however, to minimize future agony among those who find themselves on the wrong side of the partition line.

First, land exchange between the Tribes is essential to minimize additional relocation and avoid any forced relocation. Such an exchange would reduce the suffering of the Navajo relocatees and reduce the financial burden on the United States taxpayer. It would also benefit the Hopi Tribe in that the lands we would propose to exchange have better development potential than the Hopi partitioned lands.

Second, resolution of the pending lawsuits by the Hopi Tribe against the Navajo Tribe and the United States, including the Moencopi litigation, is essential. Those lawsuits are uselessly draining the resources of both

Tribes. The Navajo Tribe is willing to offer additional land in and near Moencopi and to discuss other options for resolution of the Hopi claims against it. Resolution of those disputes would allow the Tribes to focus their energies on the future of their people.

Third, the development restrictions on vast sections of Navajo lands must be lifted. The Bill discussed today takes a step toward alleviating those restrictions by allowing the new Commissioner to approve some needed projects in the Bennett Freeze area. It does not allow new housing construction, however, nor does it address the burdens on those families awaiting relocation from the Hopi partitioned lands. Many families have suffered under these "freezes" for more than 20 years.

These changes in the law would be fully consistent with the amendments proposed in S.1236. Even with a land exchange, significant numbers of people who have opted to relocate will remain eligible for benefits. The restructuring of the Relocation Commission on the table today will help minimize the hardships that those people will face in years to come. Nevertheless, the changes outlined briefly above, among others, will be essential to comprehensively resolve the overall problem. The Navajo Tribe is willing to pursue a negotiated resolution with the Hopi Tribe, as some members of this Committee have suggested. Such a negotiated resolution would be ideal. Regardless of the outcome of negotiations, however, changes will have to be made in the law.

The problems facing Navajos on the Hopi partitioned lands, the Navajo partitioned lands and in the Bennett Freeze Area today are vast. They include lack of economic opportunities, physical and mental health problems, and most

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importantly, restrictions on basic human and constitutional rights. The Navajo Tribe will not argue at this late date that the Hopi Tribe does not have property rights which should be respected. Any restriction on Hopi rights, however, pales in comparison to the overwhelming suffering this law has forced Navajo families to endure. The restrictions on those individuals' religious practices, on their opportunities to improve their lives, and on the use of property their families have lived on for centuries is the type of violation of human rights which should not be tolerated in the United States. Congress must face up to that fact and take the action needed to relieve their suffering.

STATEMENT OF HOPI TRIBAL CHAIRMAN IVAN SIDNEY
TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
REGARDING PROPOSED SENATE BILL 1236 AND AMENDMENTS

As Chairman of the Hopi Tribe I herewith submit to the Senate Select Committee on Indian Affairs this statement of the Tribe's position on Senate Bill 1236 introduced by the Honorable United States Senator Daniel K. Inouye and the amendments suggested by the Honorable United States Senator John McCain.

INTRODUCTION

The primary objective of Senate Bill 1236 and the McCain amendments appears to be to expedite the completion of relocation under the Navajo-Hopi Relocation Program. We approve of this objective. Our concern is to assure the proposed changes implement this objective as effectively, humanely, and economically as possible.

With respect to implementing relocation on the 1882 reservation, we suggest a few modifications of the bill to better effectuate these purposes. These include recommendations that the new relocation Commissioner be directed to effectively administer existing policies rather than wasting time on the preparation of further reports or plans or proposing legislation, and that Congress take effective action to see that the Paragon Ranch lands acquired by the Navajo Tribe under the Navajo-Hopi Settlement Act be used for the relocation purposes intended by Congress. "The lands transferred or acquired pursuant to this section shall be administered by the Commission until relocation under the Commission's plan is complete and such lands

shall be used solely for the benefit of Navajo families residing on Hopi Partitioned Lands as of July 8, 1980, who are awaiting relocation under this subchapter." 25 U.S.C. s 640d-10(h).

With respect to other aspects of the amended bill, the Hopi people strongly object to two provisions that are not geared to expediting relocation. First, the Navajo Tribe's desire to construct a new airport at Tuba City is not a good reason to alter the terms of the statutory restriction on development in the "Bennett Freeze" area of the Western Navajo Reservation. That restriction in 25 U.S.C. s 640d-9(f) prohibits development without the consent of both Tribes on a portion of the 1934 Reservation in order to protect Hopi interests in that area now being resolved in a lawsuit authorized by Congress.

Other solutions to the Tuba City airport problem can be identified without modifying the general requirement of tribal consent imposed by 640d-9(f). Restricting development to that authorized by joint tribal consent is the means of protecting established Hopi rights in those lands. Even under the law as it stands today, substantial and widespread Navajo development has taken place in violation of the requirement of Hopi consent. Changing the law at this time would send the wrong message to those Navajos who are only too ready to illegally develop land that may be awarded to the Hopi people in the 1934 Reservation lawsuit

With respect to the second problem, it would also be a grave injustice to the Hopi people to punish them for the excesses of

the much larger Navajo Tribe -- and to render them helpless before the Navajo -- by cutting off federal funds for retaining counsel in connection with 1882 Reservation matters and 1934 Boundary Bill law suits.

Depriving the Hopi Tribe of attorneys' fees would violate the mandate of the Navajo-Hopi Settlement Act of 1974 and the 1980 Amendments to that Act -- as well as the fundamental principle underlying 25 U.S.C. s 175, which requires the United States attorney to represent Indian tribes "in all suits at law or in equity." Congress authorized payment of private attorneys in these cases because an intertribal conflict of interest prevents the U.S. Attorney from representing either Tribe.

Moreover, eliminating attorneys' fees would not just reduce assistance to the Hopi Tribe, but would deprive the Hopi of substantive legal rights. That is true for two reasons. First, due to the United States government's own acknowledged mishandling of Hopi affairs, we have been reluctantly forced into the role of judicial plaintiff, having to enforce in the courts their statutorily recognized rights against the Navajo Tribe. Second, the Navajo Tribe, which outnumbers the Hopi by twenty to one, possesses vastly greater financial resources than the Hopi, and would easily outlast the Hopi in a legal war of attrition based on financial resources. Depriving the Hopi of financial assistance for fees would deprive us of the lands and other rights to which we are entitled.

Any excesses in the spending of federal funds have been by

the Navajo. This Committee must not permit the suffocation of the Hopi people's substantive legal rights through this deceptively "neutral" cost-cutting measure in the proposed bill.

II. PROVISIONS OF SENATE BILL 1236 ADDRESSING RELOCATION

Relocation of some Navajos and Hopis from the former Joint Use Area is a necessary consequence of the Navajo-Hopi Settlement Act of 1974, the 1980 Amendments to that Act, and related Congressional and judicial decisions. The Hopi are entitled to take full possession of and sovereignty over the land decreed to be theirs.

The relocation process is now approaching completion. All Hopis have long since moved from the Navajo Partitioned Lands, and all but 238 Navajo families have moved from the Hopi Partitioned Lands.

The official position of the Navajo Tribe has been to hinder relocation, without heed for the great cost in economic and human terms of that position. This has led to frustration on the part of some Navajos, who have reasonably expected the Navajo Administration to provide them some support and assistance. In addition, a few groups of outsiders such as the Big Mountain Legal Defense group have fanned the flames of public ignorance through propaganda and distortions about relocation.

Notwithstanding problems arising from deliberate obstruction by a few, the fundamental facts about relocation are that it is necessary and inevitable. The Hopi Tribe supports

expeditious and humane relocation under the existing law. We fully endorse Assistant Secretary Swimmer's commitment to move Navajos off Hopi Partitioned Lands.

Opponents of relocation have emphasized the problems of the relocation process. The problem is that it has taken so long to complete, and that new lands acquired by the Navajo Tribe with federal aid earmarked for relocation may be used primarily for other unrelated Navajo projects.

For example, the Paragon Ranch acquired by the Navajo Tribe from the Bureau of Land Management, subject to the legal requirement under 25 U.S.C. 640d-10(h) that it be used for the benefit of relocatees, is now expected to be used entirely for a coal-fired power generating plant to be built by the Navajo Tribe in partnership with utility companies. It appears that no relocatees at all will live there, or benefit directly from the huge revenues to be generated by the utility project. In fact, 100 Navajo families now living on these lands have been told by the Navajo Administration they must relocate so the Navajo Tribe can strip mine for coal.

Given these facts about relocation, a few conclusions seem self-evident. First, the Navajo Administration needs to accept responsibility for its people and assist in relocating them. Second, anything that can be done to streamline and expedite the process of moving relocatees should be done now, so that the final stages of relocation can be completed quickly. What remains to be done now in the relocation process must be done

effectively and humanely at minimal additional cost.

These considerations lead the Hopi Tribe to applaud Senate Bill 1236 and the McCain amendments to the extent that they seek to expedite the completion of relocation. Such concern for speedy completion of the process always has been fundamental to resolving the controversy.

But related consideration also lead the Hopi people to recommend a few changes in the bill. First, Senate Bill 1236 should be amended to enforce the requirement that the Navajo Tribe use the Paragon Ranch solely for relocation purposes and for the benefit of relocatees. Specifically, in the event that the Navajo Tribe does not within 180 days of the enactment of the legislation settle relocatees on the Paragon Ranch, ownership of the Ranch should revert to the United States.

Second, it should be recognized that the provision empowering the new Relocation Commissioner to recommend additional legislation in a report to be submitted six months after the Commissioner's appointment is an invitation to further lengthening of the relocation process. The Commissioner's responsibilities are adequately described in the existing legislation and regulations. The Commissioner's job is to administer the existing policies, not to reinvent them.

By the same token, the Hopi Tribe sees no need for the new Commissioner to prepare an elaborate relocation plan or new report to supplement that already prepared by the Relocation Commission. The current plan already adequately addresses the

goals and objectives of relocation and the means of completing the process. Although it may be reasonable to require the Commissioner to report to Congress on occasion, the two Tribes also should be given opoportunity to report at the same time.

Further, although the Hopi Tribe always will insist that relocatees be treated fairly and humanely, most of the difficulties experienced by relocatees result more from their effective abandonment by the Navajo Tribe -- which uses relocatees as pawns in its obstruction game -- than from any lack of assistance by the federal government. The proposals in Senate Bill 1236 for economic development and training for relocatees would work best if deleted from the relocation legislation and made the subject of other federal dealings with the Navajo Tribe. Existing tribal and federal programs already address these issues.

III. THE BENNETT FREEZE RESTRICTING DEVELOPMENT OF THE WESTERN 1934 RESERVATION SHOULD NOT BE MODIFIED

To understand the importance of the "Bennett Freeze to the Hopi Tribe, it is necessary to consider the history behind it.

From the beginning of the sovereignty of the United States government over Hopi lands in 1848 until 1934, the Hopi Tribe saw its traditional homeland eroded by the encroachment of Navajo Indians and white settlers. Under the Treaty of Guadalupe Hidalgo transferring sovereignty to the United States, the Hopi people were entitled to protection of their rights in lands

which they had occupied for more than a millenium.

Far from protecting Hopi rights, the United States government acquiesced in the invasion of Hopi territory by others. Even the government's withdrawal for the Hopis of a small portion of their ancestral lands in 1882 soon proved illusory. Years later, a federal court awarded sovereignty over almost half of that "Hopi Reservation" to the Navajo Tribe. Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963).

In an Act of June 14, 1934, Congress recognized and vested Hopi property rights in other lands -- the larger area used by Hopis surrounding the 1882 Reservation. Pub.L. No. 73-352, 48 Stat. 960. At the instance of the Navajo Tribe, Congress sent this dispute to federal court in 1974. The U.S. District Court in Phoenix is now actively considering this case and should reach a conclusion within the next 12 to 24 months.

From 1934 until 1974, Hopi rights in the 1934 Reservation were ignored by the federal government and the Navajo Tribe whose population increased explosively. Finally, in 1980, recognizing that further Navajo expansion onto those 1934 lands eventually to be awarded to the Hopi would make any resolution of the issue a judicial nightmare, Congress enacted into law the administrative restriction on development of those lands that had previously been imposed by the Bureau of Indian Affairs under the name of the "Bennett Freeze." 25 U.S.C. s 640d-9(f). Under this restriction, Congress prohibited new construction

on the 1934 Reservation immediately west of the 1882 area that was not approved by both Tribes.

The amendments to Senate Bill 1236 now propose to modify the terms of this "freeze" to evade the requirement of Hopi tribal consent. When legitimate health and safety concerns are shown, the Hopi people will readily consent to any reasonable construction proposal, and often have done so in the past. But in view of the historical pattern of Navajo encroachment and occupation of Hopi lands by lawless action rather than by lawful right, the Hopi people oppose any proposal that would lead to further Navajo expansion and development on lands belonging in part to the Hopi.

The amended bill would give a third party, the Relocation Commissioner, the authority to approve certain development "necessary for health, safety, or general welfare," notwithstanding opposition by either Tribe. The purported justification for the proposal is the need for a new airport to serve the hospital at Tuba City. Yet the airport proposal itself serves to illustrate problems that may arise if a third party is given approval authority.

The Navajo propose not to expand or improve control at the existing airport at Tuba City, but to construct an entirely new facility several miles to the east. The new facility is claimed to be necessary to handle medical emergency flights that cannot be handled by the existing airport. The proposed new facility would be large enough to accommodate general and commercial

aviation as well as medical flights. Yet between the Navajo settlement at Tuba City and the proposed new airport lies Pasture Canyon, which contains Hopi farms, religious shrines, and the vital irrigation system that provides most of the water for their Hopi farms below the village of Moenkopi.

The existing airport could be improved to make it adequate to serve the Tuba City Hospital. The real problem is uncontrolled Navajo livestock and lack of adequately maintained fencing around the airport, unrestricted access to the runway by pedestrians and bicyclists, and damage to runway lights by local vandals. All of these problems are correctable with proper assistance from the Navajo Tribe. Without the help of the Navajo Tribe and the Bureau of Indian Affairs, these problems would likely recur at any new airport.

The Hopi are confident that the federal court resolving the Hopi rights in the 1934 Reservation will hold that the Hopi Tribe has exclusive sovereignty over Pasture Canyon, among other areas, based on historical and continuous Hopi use through 1934 (as well as since that time). Hopi preservation and control of Pasture Canyon are therefore vital to the Hopi residents of Moenkopi. The effect of developing the new Navajo airport would be to sandwich the Hopi lands in Pasture Canyon between the Navajo Administrative Area at Tuba City and the Navajo airport complex to the east. Development of roads, bridges, and other airport infrastructure in the Canyon area would adversely impact Hopi use, and would complicate the partition of the area

that will necessarily take place in the future.

Under the existing law requiring tribal consent to any new construction, the Hopi Tribe can work with the Navajo Tribe to minimize adverse impacts of the airport on their interests in the area. But this opportunity would disappear under the proposal in Senate Bill 1236 to empower the Relocation Commissioner to decide the issue. Based on the Hopi experience with government administrators, the Hopi people are justly suspicious of any proposal that permits their own vital interests to be determined in this fashion.

The Hopi people propose that Senate Bill 1236 retain the tribal consent requirement. Keeping this requirement will not prevent altogether the construction of an airport -- or any other essential facility. It will simply ensure that the Hopi retain some ability to negotiate reasonable protection for their legal interests in affected lands, such as proper Navajo management of any new facilities, and agreements that the Navajo Tribe will not claim in the 1934 Reservation lawsuit that any approved construction project confers upon the Navajo special possessory rights in the affected lands.

The Hopi Tribe cannot consent to a change in the freeze that would permit the Navajo Tribe to increase its hold on areas which will ultimately be recognized as Hopi. The longstanding difficulties associated with relocation on the 1882 Reservation make that clear. The Hopi Tribe did not seek the lawsuit over the 1934 Reservation or the development restrictions it has

caused. The lawsuit and consequent restrictions were imposed by Congress at the request of the Navajo Tribe, which seized every opportunity available in 1974 to avoid a legislative partition of the 1934 Reservation.

Permitting the Relocation Commissioner to unilaterally authorize Navajo construction and investment in the area would likely create greater anguish in the future when partition occurs, particularly if the Commissioner were to succumb to Navajo pressure and take an expansive view of the proposed "health, safety, and general welfare" criteria. Or worse still, the court that is to identify the Hopi lands within the 1934 Reservation may simply be unwilling to face the problems created by such unrestricted Navajo development on Hopi lands, and might refuse to enforce Hopi rights.

Even in its present form, the freeze has been widely and repeatedly violated by the Navajo Tribe and its individual members. The Hopi Tribe can provide documentary support for more than one hundred incidents of illegal Navajo construction. Because the law does not specify how the freeze is to be enforced, the BIA has disclaimed any enforcement responsibility whatsoever, despite Hopi pleas. Further relaxation of the restrictions at this time would send precisely the wrong message to the Navajo, encouraging further violations.

IV. FEDERAL FUNDING OF ATTORNEYS' FEES FOR COUNSELING THE TRIBES ON 1882 RESERVATION MATTERS MUST NOT BE TERMINATED

The Hopi Tribe has strong objections to the attorneys' fees provision of the proposed amendments to Senate Bill 1236, which could devastate the substantive legal rights of the Hopi Tribe. As the Committee may not be aware, this portion of the bill would end the availability of federal funds to assist the Hopi Tribe in retaining counsel for work on certain critical matters arising out of the partition of the 1882 Reservation. By doing so, the bill would cause disproportionate harm to the Hopi Tribe.

The services of counsel are essential to the Hopi Tribe in enforcing the rights recognized by Congress in the Navajo-Hopi Settlement Act of 1974. This fact was recognized by Congress in 1974, and again in 1980, when Congress passed the legislation requiring the United States to pay for legal expenses incurred by the Hopi and Navajo Tribes in enforcing their rights under the 1974 Act. It is beyond doubt that the payment of these legal expenses is necessary to a full and fair resolution of these disputes, and is appropriate because of the partial responsibility of the government for the disputes.

Moreover, the payment of fees also was necessary under the fundamental principle requiring the United States attorney to serve as counsel to Indian tribes "in all suits at law or in equity." See 25 U.S.C. s 175. In this case, the only reason

state the federal government is not obligated to represent the Hopi people under that statute is the conflict of interest that prevents any United States attorney's office from undertaking the simultaneous representations of both Navajos and Hopis in intertribal disputes. Congress recognized that private counsel had to be retained by each Tribe in these special circumstances, and that the cost should be borne substantially by the United States, as it would be under 25 U.S.C. s 175.

By making it prohibitively expensive for the Hopi Tribe to retain counsel, the amended bill would nullify the provisions of the 1974 Act dealing with 1882 Reservation matters, and would render the rights contained in those statutes meaningless to the Hopi. As explained below, those rights include important claims specifically recognized by Congress arising from the partition of the 1882 Reservation. Legal rights that cannot be enforced are no rights at all.

The Navajo Tribe -- large and wealthy as it is -- would not suffer harm of the same magnitute. If federal funds for counsel were withdrawn, the various 1882 Reservation judicial proceedings authorized by the 1974 Act would have to be financed by each Tribe from its own private funds. In any contest pitting the great private resources of the Navajo Tribe against the much smaller means available to the Hopi, the Navajo would inevitably win -- simply by outlasting the Hopi in an unfairly matched war of attrition. What for the Hopi has been justice delayed would become justice denied.

In considering the attorneys' fees portion of the bill, the Committee should keep in mind the disparity in wealth and resources between the almost 200,000-member Navajo Tribe and the 10,000-member Hopi Tribe. The Navajo Tribe is the largest recognized Indian tribe in the United States, with the largest reservation of any Tribe. The Navajo Tribe is well-financed from income including massive revenues from oil, gas, and coal taxes and royalties. The Navajo Times has reported that the Navajo Tribe showed a budget surplus during fiscal year 1986 of some $99 million.

This affluence enables the Navajo Tribe to approach the expense of legal work very differently from a small tribe like the Hopi. The Navajo Tribe has its own tribal "justice department," an in-house law firm employing up to twenty lawyers who work on matters for the Tribe. (In addition, the Navajo Tribe funds the Navajo-Hopi Legal Services Program, which employs several lawyers to assist only Navajos in bringing "individual" actions relating to relocation).

A list of the many legal matters growing out of the 1974 Act and related disputes with the Navajo Tribe is attached. These various legal matters include many cases which are now in midstream. Several of the actions will be resolved by the courts relatively soon, during the next two or three years. Others will require more time to resolve.

The federal funds for attorneys' fees, though they do not fund all of these cases, are crucial in implementing the most

important Hopi rights relating to the 1882 Reservation. For example, the funds are being used pursuant to 25 U.S.C. s 640d-5(d) to determine in court the difference in value between the Hopi Partitioned Lands and the substantially more valuable Navajo Partitioned Lands -- a matter that Congress itself recognized to be of critical importance.

The Navajo strategy of fighting a war of attrition against the Hopi people is well illustrated by certain of these matters. For example, one provision of the 1974 Act recognizes Hopi rights to collect rental from the Navajo Tribe for its post-partitionment use of the Hopi Partitioned Lands. The amounts of these rentals have already been calculated and approved by several levels of authority at the Department of Interior, after full presentation and consideration of all of the issues. Yet the Navajo Tribe, though it disputes only minor aspects of the valuation approach, has refused to concede or compromise on the issue, and recently commenced a groundless judicial action seeking to overturn the Department's determinations.

If the Navajo Tribe sees any opportunity to exhaust Hopi legal resources once and for all, it will continue to litigate these cases to death, leaving no stone unturned, because that approach will most effectively consume Hopi resources and eventually deny Hopi rights. Ironically, only the certainty of continued federal funding of attorneys' fees needed to maintain the Hopi claims will lead the Navajo Tribe to abandon this "scorched earth" policy. Enactment of the attorneys' fees provision in

the proposed amendments to Senate Bill 1236 would merely validate the Navajo attrition strategy, and seal the fate of the Hopi Tribe's established rights.

The Hopi people humbly ask this Committee not to let the Hopi Tribe's substantive rights to be extinguished for lack of resources. A Hopi Tribal Council resolution supporting this statement is attached. I will make myself available to this committee or individual members at anytime for further discussion on this issue.

I thank the Committee for the opportunity to present testimony.

HOPI TRIBAL COUNCIL
RESOLUTION
H-25-88

WHEREAS, the Senate Select Committee on Indian Affairs has requested the views of the Hopi people on Senate Bill 1236.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council approves the foregoing as the statement of the Hopi Tribal Council regarding Senate Bill 1236.

CERTIFICATION

The foregoing resolution was duly adopted by the Hopi Tribal Council on January 12, 1988, at a meeting at which a quorum was present with a vote of 15 in favor, 0 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by Section1 (a) of Article VI of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Hopi Tribal Council on October 24, 1936, and approved by the Secretary of the Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does not require Secretarial approval.

Ivan L. Sidney, Chairman
Hopi Tribal Council

ATTEST:

Dorcie Ahownewa, Tribal Secretary
Hopi Tribal Council

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January 14, 1988

VIA FEDERAL EXPRESS

The Senate Select Committee on
Indian Affairs
Attention: Mr. Dan Lewis
United States Senate
Washington, D.C. 20510

Re: Document Supplementing Hopi Tribe's Statement Regarding Senate Bill 1236 and Amendments

Dear Mr. Lewis:

Enclosed is a copy of a newspaper article from The Navajo Times. The article was intended to be appended to the Statement of the Hopi Tribe regarding proposed S. 1236 and amendments, sent to you by the Hopi Tribe under separate cover. We would be grateful if you would please see that the newspaper article is attached to the Hopi Tribe's Statement when the Statement is presented to the Committee for supplementation of the record of the related hearing of December 9, 1987.

Thank you for your assistance in this matter.

Sincerely yours,

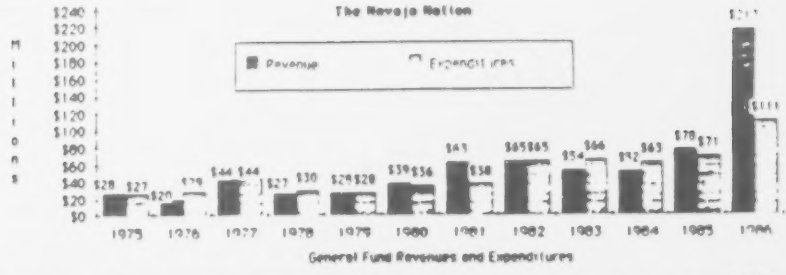
Thomas M. J. Kerwin

Thomas M. J. Kerwin

Enclosure

THE NAVAJO TIMES

Thursday, September 24, 1987 p.4



Navajo's financial condition best ever, say auditors

WINDOW ROCK — The Navajo Tribe entered the current fiscal year in the best financial shape it probably has ever been in, according to figures presented Wednesday by the tribe's outside auditors, the Albuquerque firms of Peat Marwick and Sloan and Co.

The audit shows the condition of the tribe as of Sept. 30, 1986 and does not take into consideration changes in the tribe's fiscal condition since then. Those changes will be analyzed after the current fiscal year ends on Sept. 30, 1987.

A representative of Peat Marwick, speaking to members of the Navajo Tribal Council on Wednesday, said that pending lawsuits the tribe is involved in may also change the figures for FY 86 either positively or negatively.

On Sept. 30, 1986 the tribe had more money in various trust funds and in the general surplus than at any other period in the past 10 or 10 years.

The general surplus on Sept. 30 was $69 million. The highest it had been in the 10 preceding years was $66 million at the end of FY 81. Since then, according to statements made in the past by tribal financial officials, the level has gone down, partly because of a decision by the tribal council in late 1986 to put some of the general surplus into special trusts and partly because of the council's decision last June to use $8 million of the surplus to make a partial payment on the purchase of the Boquillas Ranch.

The balance sheet provided by the auditing firms showed the tribe with total assets at the end of the 1986 fiscal year of $689 million or more than $180 million higher than it was the year before. Much of that increase is due, according to the figures, to increasing tax monies for that year and prior years.

Included in the $689 million of assets is an assessment of $212 million as the value of tribal buildings and property and $35.6 million as the value of the tribal enterprises.

The tax funds gave the tribe an sharpest increase in revenue as an history. During that one year, the tribe received $2b.9 million in payments for current year tax payments and $123 million in prior year payments. Tribal officials are now announcing that the tribe's annual revenue from taxation will be in the neighborhood of $30 million to $25 million.

The figures provided by the auditors break down, for the first time, how much the tribe is receiving from each of its three taxes. For the 1986 period, the tribe received $13 million from its possessory interest tax, $6.9 million from the business activity tax and $7 million from the oil and gas severance tax.

The tribal government did not act as a spendthrift with all of the money it received last year. Although the total operating budget for the year was a record $111 million, as compared to only $30 million in 1981, much of it was socked away for use by future generations.

The permanent trust fund, which was created three years ago by the tribal council, stood at about $26 million on Sept. 30, 1986.

Twelve percent of the general revenue each year is put into the permanent trust fund which cannot be used, according to tribal council resolution, until the year 2006.

The main scholarship fund, which was created more than 30 years ago with an additional investment of $10 million, now rests at $13.2 million. The tribe also has another scholarship fund financed by one of the tribe's claims cases settled with the federal government. This stood at $13.6 million at the end of FY 86.

Another $21 million of trust funds was set up at the early part of FY 87 to provide for services to the handicapped ($7 million), vocational education ($6 million), senior citizens ($7 million) and the Navajo Academy ($1 million).

In all, the tribe had $43.7 million being held for it by the Bureau of Indian Affairs at the end of FY 86 for various claims funds. Part of that is committed to tribal scholarships but the tribal council has allocated the interest from most of the claim accounts to go to tribal chapters.

If you add up all the various trust funds and claims accounts the tribe had at the end of FY 86, it would total more than $6d million. This does not count the $22.6 million the tribe has set aside to pay for the retirement funds of tribal employees or the $1.6 million in Arizona banks for the tribe's deferred compensation program.

With the addition of the $21 million in new trusts created in December 1986 and an additional $29 million received in claims funds, the tribe currently has more than $138 million in various banks and investments using only the interest for various purposes each year.

The figures for natural resources revenues showed that for the first time in at least the past 10 years revenues from coal surpassed the revenues for oil and gas. In FY 86 the tribe received $28 million from coal revenues as opposed to $22 million for oil and gas. This apparently was due to two factors.

First, income from oil and gas was down $6 million from FY 85. The decrease was due to lower prices for crude oil on the world market in FY 86. Also the coal revenue included a number of renegotiated contracts that took effect in that year.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SENATE SELECT COMMITTEE FOR INDIAN AFFAIRS ON THE RELOCATION OF NAVAJO HOUSEHOLDS FROM THE HOPI PARTITIONED LANDS AND ON S. 1236, A BILL TO REAUTHORIZE THE HOUSING RELOCATION PROGRAM OF THE NAVAJO-HOPI RELOCATION COMMISSION.

December 9, 1987

Thank you for giving me the opportunity of appearing before the Committee to talk about the latest Navajo-Hopi relocation efforts. However, the Administration has not developed its views on Senator McCain's draft amendments to S. 1236.

In FY 1987, the BIA has made much progress on the New Lands. Approximately 20 miles of road has been constructed in and around twelve designated housing cluster sites. Two of those housing cluster sites are home to a total of 17 Navajo families who moved to the New Lands within the last 6 months. (Of the 17, eight (8) were Hopi Partitioned Land (HPL) households, and nine (9) were extended family households who moved off of the HPL pursuant to the relocation act.) Twelve families reside at the Little Silversmith cluster site and 5 families reside at the Parker Draw cluster site. Two additional Navajo relocatee families, both residing on the HPL, have picked up the keys to their newly finished homes at Parker Draw, but will move in the Spring. These pioneer relocatee families have been able to bring along their livestock from the HPL and are currently grazing their animals in range areas surrounding their housing cluster sites. BIA range management officers have been working with these families to insure that proper range management is followed and overgrazing (which occurred on the HPL) is avoided. Twelve additional homes are currently under construction at the Antelope Well housing cluster site and seven more homes are under construction at Little Silversmith and Parker Draw. The present total number of homes either completed or under construction is 39. (One completed, but unoccupied home at

Parker Draw is currently used by the BIA to show potential relocatees.) These homes are fully equipped with electricity, water and sewage facilities. Windmills, installed by the BIA on cluster site range units, provide relocatee livestock with water.

Shortly after the first 12 Navajo relocation families moved into their newly finished homes, I toured the New Lands and met with a number of these families. These first relocation families have received extensive counseling by BIA social counselors and were involved in every phase of the development of their homesites. I was pleased with their responses about their new surroundings and heard no complaints. Print reporters accompanying me on the tour quoted relocatees as saying, "I like the house and its nice here. I like the hills and the trees." "Its's better, much better . . . The land here will provide a lot of vegetation for our livestock. I made the decision to move for the livestock."

Since taking over the responsibility of relocating these Navajos currently residing on the HPL it has been my goal to involve these people in the decision-making process. This approach has been a success. However, the Navajo Tribe has taken a "hands off" attitude to the the entire relocation program. Much time has been lost in my attempts to involve the tribe by allowing them to review and approve right-of-way requests on the New Lands, even though Congress, in its continuing appropriations for 1986 (P.L. 99-190) gives the Secretary of Interior administrative authority over the New Lands in this area. In one incident, lack of action by the Navajo Tribe with regard to an electrical right-of-way request pushed back the scheduled date of a relocation by three weeks. Finally, I had to exercise my delegated authority and grant the right-of-way. Unfortunately, lack of action has become the norm with regard to tribal action upon BIA relocation requests. It is my hope that the Navajo Tribe will work with us and thus accelerate the

relocation process. Ignoring it will only contribute to the continued plight of their people still residing on the HPL.

There are two memorandums attached to this statement. The first memo accounts for those certified eligible and non-applicant Navajo households who are currently physically residing on the HPL. (As of December 1, there are 249 families). The second memo reflects the current level of interest in the New Lands by those HPL resident households, and their extended family households (who moved off the HPL pursuant to the relocation act). (119 families - of whom fifty five (55) are HPL households and sixty-four (64) are related families that moved off the HPL and are awaiting their relocation benefits.)

It is my opinion that the BIA will be able to complete its part of the Memorandum of Understanding with the Navajo-Hopi Indian Relocation Commission (NHIRC) and commit most of the funds appropriated to it for housing activities on the New Lands by the end of FY 1988. We recommend that the NHIRC resume full control over the implementation of the relocation act, including continued development activities on the New Lands. The BIA will, of course continue its normal programmatic activities and trusteeship as required by law.

This completes my prepared statement. I will be pleased to answer any questions the Committee may have.

UNITED STATES GOVERNMENT

memorandum

DATE: December 2, 1987

REPLY TO ATTN OF: Kathy Helmer, Staff Assistant, AS-IA

SUBJECT: Progress Report on Interest in New Lands Range Units

TO: Ross O. Swimmer, Assistant-Secretary, Indian Affairs
George Gover, Assistant Area Director, NAO, BIA
Joel Starr, Staff Assistant, AS-IA
Chris Bavasi, Executive Director, NHIRC
Tim Varner, Planner, NHIRC

Since August 1986, BIA social workers have twice surveyed all households on the HPL regarding their relocation plans and presented the New Lands as a viable, new relocation alternative. Most recently, fieldworkers have shared colored photographs of the New Lands showing completed relocation homes, grazing lands and local places of interest.

Since August 1986, the number of HPL resident households and their extended family households committed to moving to the New Lands has grown from zero (0) to one-hundred-nineteen (119).

Households in this group can be categorized as follows:

Active Pre-move Households	107*
Post-move Households	12
	119

Active pre-move households are either permittee households or their extended family households. They have toured the area and selected a specific range unit as their relocation site. Social work staff have assessed each household's social, economic and health status with an eye for pre- and post-move referrals. As soon as the housing site in that range unit has been surveyed and planned, households select a one-acre homesite.

*Of this number, seven (7) households recently received keys to their homes at Parker Draw. They will not move into the post-move category until they offically notify the NHIRC that all their possessions have been moved to the New Lands. Families usually do so within one month.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

Program staff then begin pre-move meetings with families on the HPL, to explain steps in the process of relocating, and prepare them for their new environment. (Group meetings and home visits continue in the post-move period.)

The breakdown of these one-hundred-nineteen (119) households into a) HPL resident households and b) extended family households not currently physically residing on the HPL and who "Moved Pursuant to the Act" (MPA) is as follows:

HPL Resident Households	55	46%
MPA Households	64	54%
TOTAL	119	

There is approximately one HPL resident household to one related MPA household. This is an overall ratio, not one specific to each family group. For example, one family group slated to move to the Antelope Well range unit is comprised of ten (10) households, eight (8) of which are current physical residents of the HPL.

Since no policy has limited the number of MPA extended families to move with HPL residents households, this ratio has resulted from a "sifting" process related to families' plans, priorities, and current situations. Three generations of one extended family often move to the New Lands. The educational backgrounds, employment skills, and cultural attitudes in each extended family are often diverse, thus providing support to family members in need.

New Lands range units hold greatest interest for family groups that are most committed to a grazing lifestyle and/or a consist of several households awaiting relocation benefits. When a major part of a family has already had their replacement homes built elsewhere, e.g. the Navajo Partitioned Land or larger Navajo Reservation, the remaining households tend to chose a "group move" to that same area over the opportunity to continue a grazing lifestyle on the New Lands.

Future Relocations to Specific Range Units

Families have selected the following range units as their future homes:

Parker Draw	10
Little Silversmith	7
Antelope Well	14
Chambers (South)	8
East Mill	15
Hogan Well	11
Middle Well	16
Navajo Springs	6
Pine	18
Tawney	4
TOTAL	107 Households

These households consist of the following mix of Permittee and Non-permittee householders:

Permittee Households	39	28%
Non-permittee Households	77	72%
TOTAL	97	Households

This ratio of one Permittee household to two Non-permittee households has been evident since the beginning of the program.

By summer of 1988, we expect a significant increase in the numbers of families requesting relocation to the New Lands. With homes now completed or under construction in three (3) range units, the New Lands has become an attractive relocation alternative.

UNITED STATES GOVERNMENT

memorandum

DATE: December 2, 1987

REPLY TO ATTN OF: Kathy Helmer, Staff Assistant, AS-IA KCH

SUBJECT: Physical Residents of the Hopi Partitioned Land

TO: Ross O. Swimmer, Assistant-Secretary, Indian Affairs

This memorandum provides information on physical residents of the Hopi Partitioned Land. This information will serve as the baseline for future program work on the HPL. Continued survey of the HPL is not planned, as it is costly of program resources and reduces the time spent with family groups wishing to relocate in the short-term.

The tables below present results of the survey completed November 1987.

Numbers of Households Physically Residing on the Hopi Partitioned Land

Certified Eligible Households Physically Residing on HPL	207
Certified Households with Signed Relocation Contracts Physically Residing on the HPL and Awaiting Completion of Replacement Homes	19*
Non-applicant Households Physically Residing on the HPL	23
TOTAL	249

*This number includes: five (5) HPL resident households that recently received keys to their homes at Parker Draw range unit; two (2) HPL resident households awaiting completion of their homes at Parker Draw range unit; and seven (7) HPL resident households whose homes are under construction at Antelope Well range unit, New Lands. Homes for the remaining five (5) households are being constructed at sites on the larger Navajo Reservation.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114
* U.S.G.P.O. 1988-601-368/20041

Relocation Preferences of Certified Households Physically Residing on the Hopi Partitioned Land.*

	November 1987	
Undecided	43	21%
New Lands: Range Units and Rural Community	46	22%
Larger Navajo Reservation	61	29%
Off-reservation	2	1%
No Plans for Relocation	54	26%
Preference not Determined	1	.5%
TOTAL	207	HOUSEHOLDS

Since program work began on the HPL in August 1986, relocation preferences have shifted in discernable ways among certain categories.

First, there has been a shift from the "Undecided" and "Larger Navajo Reservation" preference categories to the New Lands alternative. This appears to be a response to the opportunity on the New Lands to continue grazing livestock; it is also a reaction to the difficulty of obtaining local approval for a homesite on the Navajo Partitioned Land and the time required to process a homesite lease to the point of home construction.

The second shift is from the "Undecided" to the "No Plans for Relocation" category. This category was previously termed "Resisting Relocation." The terminology has been changed because the term "resistor" connotes an individual participating in visible, politically active groups; it does not represent the situation of many of the families contacted in the field whose personal situations, sentiments and activities are diverse.

*Households "Resisting Relocation" in the first survey were not resurveyed in the second. It is assumed that they still resist the program. In one chapter, Teesto, survey work was necessarily abbreviated and those households not yet resurveyed were assumed to have the same relocation preference as in April 1987.

For example, some of these families are elderly people who years ago tried unsuccessfully to get homesite leases on "the other side of the fence." Their attempts to relocate having been frustrated, they intend to remain quietly on the HPL. These elderly people do not see the New Lands as a viable option; they do not even wish to tour the area. They say they are simply "too old" to try a land "so new." Moving "over the fence," apparently, would not have disrupted their ties to the land; they believe a move more distant would do so. If they were offered a homesite lease on the Navajo Partitioned Land, they would likely move.

Other families have a "wait and see" attitude; saying they will move "when it becomes necessary." Reported talks by chapter managers, tribal officials, and representatives of a land exchange bill or repeal of the Act may be responsible for this attitude. The majority of these families do not begin to understand the difficult formal process required to implement a land exchange; they have no way of independently calculating the potential success of such a bill. They encapsulate this unknown set of actors, places, actions, and issues in one word, "Washingdon." Many families have the impression that a land exchange is imminent; there is no way of knowing how they have this impression--be it from misinformation or misunderstanding.

A last group within the category "No Plans for Relocation" can be called "resistors." These families have made it known that they do not wish to be visited and program staff have had minimal interaction with them. Given the lack of recent communication among these families and our program staff, it is difficult to describe their situations. It is, however, fair to state that they are concerned by the lack of clarity surrounding their future. They see it as holding three possibilities: land exchange; continued HPL residence under terms to be set by the Hopi Nation; or forced physical eviction.

It is difficult to reliably quantify the numbers of families that fit into the above scenarios. Families often offer several rationales for their reluctance to pursue specific relocation plans. There is the sense that the "wait and see" category comprises some 30 percent of those families with "No Plans for Relocation."

Chapters of Certified Households with "No Plans for Relocation"

Households with "No Plans for Relocation" are distributed over the affected Navajo Nation chapters as follows:

Red Lake	1
Shonto	1
Forest Lake	1
Coal Mine	10
Hardrock	28
Tolani Lake	5
Low Mountain	1
Jeddito	2
Teesto	6
Whitecone	1
TOTAL	56

Projections

It is reasonable to expect the following trends on the HPL in the next year and half:

1. By summer of 1988, there will be another significant increase in the numbers of HPL families requesting relocation to the New Lands. This will be due to two factors: the residence of a critical mass of families on the New Lands by spring, and the mix of chapter affiliations represented by these families which will attract others from their region.

   Many families who are currently undecided or planning to relocate to a homesite on the larger Navajo Reservation will opt for the New Lands. Some families with "No Plans for Relocation" will decide to move to the New Lands. These families will be closely related to others who have already requested relocation to the New Lands. This will be a less significant trend, but, nonetheless, a steady, gradual movement.

2. The number of families with "No Plans for Relocation" will remain relatively stable unless an official set of clearly defined options is finalized. Families will not make final decisions until they know their final set of choices.

   Two major issues need to be addressed to enable family decision-making. The first is that of land exchange. If this is a viable option, the specific areas to be exchanged need to be defined so that families in unaffected areas do not see it as a viable option. If land exchange is not feasible, this also needs to be stated clearly. The second issue is whether or not families who remain on the HPL will be physically evicted or allowed to stay under terms set by the Hopi government. If they will be allowed to stay, the conditions to pertain need to be spelled out.

   Based on our work with these families, it is our belief that many families will put off final decision-making until there is absolute clarity regarding all options.

   Such clarity will be a factor of their receiving the same information regarding options from the Navajo Nation, the Hopi Tribe, the NHIMC, and BIA. Families are now receiving mixed messages and, at times, contradictory information about their options. This uncertainty and confusion prolongs their indecision, and contributes to debilitating stress for some. Only when the same message comes from all parties will they decide to act.

12/07/87

TESTIMONY OF SANDERS UNIFIED SCHOOL DISTRICT
NO. 18, SANDERS, ARIZONA
TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,
DECEMBER 1987

Sanders Unified School District No. 18 is located in Northeastern Arizona at the Intersection of U.S. Interstate 40 and U.S. Highway 666. The District presently serves about 850 students in a Kindergarten through Grade 12 program. Approximately 91 percent of these students are members of the Navajo Indian Tribe. The District, during the past two years, has become an "island," with the Navajo reservation to the north and the so-called New Lands of the Navajo and Hopi Indian Relocation Commission to the south, thus surrounding the community with federal trust lands.

Primarily due to the location, the District is facing at least two major problems and their ramifications. First, projections of the Navajo and Hopi Relocation Commission and the Bureau of Indian Affairs "indicates that approximately 500 families will be relocated to the New Lands." (Letter from Christopher J. Bavasi, executive director, NHIRC, to Peter Belletto, superintendent, SUFD, October 21, 1987.) Five hundred families will have a major impact on the District

and the community. If each family places but one student in the Sanders schools, the student population will increase about 59 percent, to 1,350. At the present time, the District is utilizing all available space in buildings erected in 1939, 1958 and 1970, respectively. The addition of 500 students will definitely mean that at least one new building will have to be constructed and that at least one, more likely two, of the existing buildings will have to be renovated and expanded. The same would also be true if only 300 new students came to the District. This projected growth will not only impact upon space, but upon curriculum, including the need for more courses and teachers as well as a greater breadth of programs. By extension, this growth would also mean changes in the community to accommodate the increased staff and more community services would mean additional employment and more program demands.

The District has an assessed valuation of about $13 million, which is very low by most standards. This valuation may decrease when the Federal Trust Lands (New Lands) are taken from county assessment roles. The District is also bonded through 1991 for a cafeteria built in 1979.

In addition to the need for new buildings to house the additional students, the District also needs help to provide safe drinking water to all students--both the new and the existing ones. Sanders lies in the Puerco River Basin which is

the main alluvial aquifer source of the District. The Puerco is the same river into which some 94,000,000 gallons of radioactive mill talings was spilled by the United Nuclear Corporation in 1979. Yet another study and report on the effect of this spill are being prepared, but in the meantime, we are faced with a report by the Water Resources Division of the U.S. Department of the Interior which states, "groundwater in the alluvial aquifer of the Rio Puerco River Basin may not be safe for human consumption." One of the wells on the district property was noted for "activity of radium-226 plus radium-288 (which) exceeds 5 pc:il." was radioactive contaminated groundwater. Therefore the District must have something done to assure that contamination will not harm its students or staff.

The District has need for immediate assistance, both financial and technical, in these matters. The District has appealed to the many agencies and individuals for help, even proposing a budget to the Navaho and Hope Relocation Commission to allow the District to begin to do something realistic to address the problems. To date, the District has received many responses, some positive, some negative, some questioning jurisdiction, but none of substance has arrived so far.

With its very limited resources, the District is attempting to do what it can to alleviate the immediate

problems of outmoded and unsafe buildings, but these measures are stop gaps at best. The cost of new, deeper wells or the casing of existing ones, or treating the water to remove radioactive contamination are matters for technical examination--and are of great cost. The engineering, architecture, and construction of new buildings or the renovation of old ones is also very expensive. The growth of the community also poses many questions which need to be addressed professionally.

While the District is the recipient of these problems, they are not of its making and the District must look at the larger entities of which it is a constituent--the United States Government, the State of Arizona, and the Navajo Tribe--for assistance. The health, education, welfare, and safety of 850 to 1,350 students and the people who work with them are at stake here and the stakes are too high in a morass of bureaucracy. Your body has the means and the authority to do something to help the District to help itself or to have other agencies become directly involved. In behalf of the Governing Board, the students, the staff, the parents, and the community, we implore you to take some action to help us.

STATEMENT OF THE BIG MOUNTAIN LEGAL OFFICE

Before the Senate Select Committee on Indian Affairs

Hearing on S.1236

Reauthorization of the Navajo-Hopi Indian Relocation Commission

December 9, 1987

Introduction

Now is an appropriate time for the Senate Select Committee on Indian Affairs to re-evaluate the structure of and appropriations for the Navajo-Hopi Indian relocation program. There are over five thousand individuals who have been forced to leave their ancestral homelands on the Hopi Partitioned Lands or the Navajo Partitioned Lands but have not received any federal assistance to date. Many, if not all, of these families are in desperate need of receiving the relocation benefits promised them by PL 93-531. However, many of these families would rather choose to return to their ancestral homelands if the federal government were to give them that choice. Finally, despite the great suffering, disorder, and poverty caused by the relocation program, several thousand individuals still remain and will remain on their ancestral, sacred homelands.

There has never been a voluntary relocation program. PL 93-531 ultimately gives the affected individuals no choice but to submit to "the white man's law" and accept the promise of benefits provided under that law, or to risk disobeying that law in order instead to follow "the natural law of the Creator" who has instructed the people to remain on and to care for their sacred, ancestral homelands.

Several factors have served to persuade over two thousand families to submit to the mandates of PL 93-531. Fencing crews have repeatedly destroyed offering places, burial sites, and other

sacred areas. A ban on all new construction and improvements has prohibited many families from remaining on the HPL. Young couples could no longer marry and live, according to the traditional way, on their families' home areas. Because of the construction ban, several generations were crowded into small houses and hogans. Families were unable to grow while remaining on the HPL, except under the most difficult circumstances. But even more devastating was the livestock reduction of up to 90%. The people's livelihood was forcibly taken away from them, while the fear of the forcible eviction of the people themselves continually plagued them.

Given these conditions, it is most reasonable to assume that all those several hundred families who remain on the HPL today--and not a mere estimated fifty--do so because they strongly desire to remain there. Moreover, no one knows exactly how many families live on the HPL today. As in the past, the federal agencies responsible for implementing the relocation program cannot produce consistent figures.

The concerns of the traditional Navajo people affected by the relocation program have been continually ignored and/or misunderstood by the federal government. This serious failure on the part of the government is somewhat understandable given the specific character of traditional Navajo cultural identity and religion. It is difficult for urban, mobile professionals to understand that no matter how "thorough and generous" the program of relocation benefits may be or may become, relocation can never be made humane. For the traditional Navajo, one's homeland is religion and life itself; therefore, relocation inevitably destroys cultural identity and

religious practice.

The three statements that follow this introduction are representative of the views of those religious Navajos whose way of life has been severely afflicted and threatened by the relocation program. Mark Charley of Teesto and Alice Benally and Kee Shay of Big Mountain eloquently express the religious convictions and responsibilities not only of themselves as individuals but of their communities. Their statements reveal that for the traditional Navajo, one's home area is a sacred cosmos which cannot be duplicated elsewhere. In an alien land, the life-ordering teachings and instructions of the Creator which the preceding generations have handed down to the people would be rendered meaningless and useless. In a strange land, the people would not know where to make their offerings, or how to invoke the healing powers of medicinal plants. Nor would they know the sacred names and origins of places, nor how to address the spiritual beings of the foreign land. Without the specific knowledge of the spiritual beings of their home area, the Navajos could not make their prayers effectively so as to ensure that they would be heard by the Holy People.

Moreover, the home area is the location of the family ceremonial hogan. The traditional hogan is a microcosm of the Navajo sacred universe. For example, the posts of the hogan represent the Four Sacred Mountains which mark the boundaries of the world in which the people were placed by their Creator. The hogan is similar to a church insofar as it is the site for all religious ceremonies, which sanctify it through use. However, a hogan differs significantly from a church in that its sacred power is site-specific. Ceremonies can be efficacious only if they are performed in a hogan of one's

home area. Furthermore, the floor of a hogan is the soil, Mother Earth Herself. A family's hogan is consecrated by the drawing directly on the earthern floor of the ceremonial sandpaintings which depict the Holy People and other supernaturals.

The above summary of merely a few of the essential features of Navajo religion, as expressed by Mark Charley, Alice Benally, and Kee Shay, is sufficient to indicate that relocation involves more than an expensive and mismanaged federal housing project and benefits program. It is the destruction of the metaphysical foundation of a way of life.

The three statements submitted by the traditional Navajo people today are virtually identical to the many statements presented to the Senate Select Committee on Indian Affairs on May 20, 1981 in opposition to the Relocation Commission's Report and Plan. In his introduction to the statements of the residents from the Big Mountain-Rocky Ridge community, Roman Bitsuie wrote: "Of all the issues which have been brought to bear on Public Law 93-531 and its mandate for Navajo relocation, the one which has been most consistently minimized and continually misunderstood is the issue of Navajo religion. This is paradoxical, for although it has received the least attention, it is one of the most fundamental reasons why the Navajos refuse to leave their land." Today--almost seven years later--the situation remains the same: religious considerations are of paramount importance to the Navajo people directly affected by PL 93-531, but they are not understood or considered by the federal government.

The Navajo-Hopi Indian Relocation Commission (NHIRC) has commissioned only one, preliminary study of merely one community on the HPL, pursuant to the enactment of the American Indian Religious Freedom Act of 1978 (AIRFA). This study--"A Preliminary Assessment

of the Significance of Navajo Sacred Places in the Vicinity of Big Mountain, AZ" by J.J. Wood and W.M. Vanette, 1979--called for "more detailed, comprehensive study." Such comprehensive study was never undertaken by the federal government.

However, Dr. Wood himself performed a more comprehensive study and submitted this new study to the Senate Select Committee on Indian Affairs on May 20, 1981 in opposition to the NHIRC's Report and Plan. (See "Land and Religion at Big Mountain: The Effects of the Navajo-Hopi Land Dispute on Navajo Well-being"). Both studies by Dr. Wood indicate that for traditional Navajos, there is an absolute interdependency of sacred places and occupancy of ancestral homelands. Dr. Wood's studies have been corroborated by the work of other social scientists, such as Dr. Thayer Scudder and Dr. Jennie Joe. [See Thayer Scudder, No Place To Go: Effects of Compulsory Relocation on Navajos (Philadelphia: Institute for the Study of Human Issues, 1982); and Jennie Joe and Robert Young, "Impact of Land Dispossession on the Well Being of Families in One Navajo Community" (Tucson: Native American Research and Training Center, University of Arizona, 1987)]. Thus, the legal provision that PL 93-531 makes of access alone to sacred places violates the First Amendment rights of the traditional Navajos to the free exercise of religion.

The relocation program also violates the Congressional intent expressed in AIRFA. This Act expressly requires federal officials to evaluate the impact their policies and actions might have upon Native American religious practices and to avoid those actions which do not serve "to protect and preserve for Native Americans their inherent right of freedom to believe, express and exercise

the traditional religions." Thus, AIRFA must be read as a statement of official Congressional policy mandating the agencies of the Executive Branch to give presumptive preference to those alternative courses of action which are least injurious to, least incompatible with, and least intrusive upon the practice of Native American religious traditions. It is clear that the actions of the NHIRC and the Bureau of Indian Affairs (BIA) in planning and implementing the relocation program violate the trust responsibility expressed by AIRFA.

Moreover, the actions of the federal agencies involved in the implementation of PL 93-531 violate the trust responsibility established by the Relocation Act itself. In PL 93-531, Congress expressly directed the NHIRC to develop the relocation program to the maximum extent feasible in consultation with the Native American persons subject to the program. In addition, Congress expressly ordered the NHIRC to develop the relocation program so as "to avoid or minimize to the extent possible . . . the adverse social, economic, cultural and other impacts of relocation." To this end, Congress directed the NHIRC to devise a detailed Report and Plan in which the NHIRC was to identify specifically the forseeable adverse impacts of relocation.

Thus, like AIRFA, the Relocation Act expressly created a review procedure which required the government to evaluate its program to assure that the affected Native Americans would be protected. Despite these express duties, neither the NHIRC nor the BIA fulfilled its responsibility to evaluate the forseeable impacts of relocation on traditional Native American religion.

Therefore, lawyers from the Big Mountain Legal Office and other

attorneys from across the country will be filing a First Amendment (Religious Freedom) lawsuit on January 26, 1988 in Federal District Court in Washington, D.C. This class action suit is being filed on behalf of all practitioners of the traditional Navajo religion who are currently subject to the federal government's effort to relocate them from their ancestral homelands pursuant to PL 93-531. The relocation activities of the federal government unlawfully deprive these Navajo families of their ability to maintain and continue their site-specific religion. Consequently, the First Amendment lawsuit asks the federal court to declare that the mandatory removal of the Navajo people from their sacred lands violates the people's constitutional right to practice freely their traditional religion.

In conclusion, we hope that the members of the Senate Select Committee on Indian Affairs will listen with understanding and sympathy to the words and prayers of the traditional Navajo people. Accordingly, we urge the Committee to halt the relocation program on the HPL immediately.

STATEMENT OF MARK CHARLEY

Before the Senate Select Committee on Indian Affairs

Hearing on S.1236

Reauthorization of the Navajo-Hopi Indian Relocation Commission

December 9, 1987

1. I am 79 years old, and a Dineh Hataalii, a ceremonial practitioner. I live about 2 miles north of Teesto Chapter. My family has been living in this area for many, many generations. My ancestors lived here before the Long Walk of 1868, before the creation of Washington and the coming of the white man. We have always been here.

2. At the age of sixteen, I started learning to be a medicineman. I grew up among medicinemen. My grandfather (maternal) and my father were medicine men, so I started my apprenticeship as a medicineman at a young age.

3. I completed my training when I was around 26 years of age. I was told that I was now ready to start practicing what I had learned.

4. That is the Dineh way. We do not have official

schools where we teach the Dineh way of life or religion. Becoming a Dineh medicineman is a long process. There are many many ceremonies, each one takes a long time to learn and memorize. Each medicineman knows just a few of the many ceremonies.

5. I have practiced our ceremonies for the past 67 years. My father taught me the Bee snee (Flint Way), a healing ceremony, and I learned Tl'ee'ji (Night Chant) from my spouse's family. The ceremonial paraphernalia, which I use were prepared through major ceremonies. These ceremonies can only be performed in our sacred homeland.

6. The former Dineh ceremonial practitioners instructed me during my apprenticeship to conduct our traditional ceremonies. The Dine's sacred aboriginal homeland is delineated by the Sacred Rivers. To the east is (Rio Grande River) and the south is Little Colorado River, a tributary of the Colorado River. To the west and north are Tooh (San Juan) which flows into To nits'osikooh (Colorado River). Every Dineh individual has to make a corn pollen offering, before crossing these sacred rivers.

7. Our sacred homeland is also delineated by the four sacred mountains which represent the four posts of the hogan where we conduct our ceremonies. There are two other sacred mountains which represent the two door posts to the hogan.

8. I was instructed to take on the role of a healer with a medicine bundle. Where ever I go among the Dineh people, the elderly, the young people and the children and who ever

needed my services for as long as I was permitted to live, I was to stand between my people and whatever harm that would threaten them. I was instructed that I would heal people that were severely ill. The power of healing was put into my medicine and I was carefully instructed on how to use it.

9. This is my responsibility now, to help my people, to restore the natural balance and harmony within each individual. I have dedicated my life to this purpose and must continue as long as I am living.

10. Being a medicineman is an honor but it carries certain sacred responsibilities that must be respected. I have been taught sacred things, special knowledge that only medicinemen know. Some of those things cannot be shared with non-Dineh people, but I will tell you something in order for you to understand some things about the Dineh way.

11. Many things about the Dineh way are different than white man's religion so I will try to explain some things about our way. I mentioned earlier that we do not have official religious schools or written books that contain our religion, we have our oral tradition. Our traditions are taught and passed down orally through the generations.

12. The white man can practice his religion anywhere, he builds his churches or temples wherever and whenever he wants, and prays to the Creator. We too pray to the Creator, but not in some buildings but on our land in our sacred homeland. Your temples and churches have no significance to the Dineh.

13. We have been instructed by our Creator on how we

were placed here, and how this land in sacred and that it's our responsibility to caretake the land. The Creator gave us special prayers, offerings, and ceremonies in order to keep the natural balance and harmony. The Creator also gave us the Blessingway Ceremony which instructs us how to build a hogan, how the four posts represent the four sacred mountains, the two door posts represent the other two sacred mountains, how the ground is our Mother Earth, and the roof is Father Sky.

14. The Blessingway Ceremony teaches how to pray for the good things in life and for health and prosperity. We are also taught how we can only perform ceremonies in our hogan on our sacred land. The hogan is like your church or temple, because that is where we make our prayers and hold our ceremonies. But our hogan is also different because we cannot just build a hogan anywhere like the white man's religion.

15. Hogans can only be built within the four sacred mountains which define the sacred homeland. Another difference between the Dineh people's hogans and the white man's churches or temples is that each individual has a special sacred bond with both the hogan and the land where he or she is from.

16. The white man can pray in any church or temple of his denomination. But we Dineh are not like that. A ceremony will only be effective if performed in a hogan in your home area. When you have a ceremony, you pray to the spiritual beings and they communicate the prayers to the Holy People. If you tried to perform a ceremony in a foreign land, the spiritual beings wouldn't know you and the ceremony would be ineffective.

17. My ancestors were born here, I was born here, my children were born here. They were not born in the hospital. We have eight children, five of them men and three women. My children are known by the spiritual beings here, just as I am and my wife, my whole family. That is why we perform ceremonies here for our family, if we performed a ceremony in a foreign area it would not help.

18. We cannot learn about the spiritual beings elsewhere, it is here our umbilical cords are buried, it is here the afterbirth was offered, it is here that we used a tree to build cradleboards, all of these things form a spiritual bond with our land and introduce us to the spiritual beings. You never forget the places that these things happened, these are sacred sites to you. You can never move your umbilical cord once it is buried, it stays there forever and you must make sure that nothing happens to that area.

19. When a cord is placed, a bond has been made between the baby and the land, that's what they say according to the stories that was handed to me.

20. A person may build his home near a place where his umbilical cord has been placed. Boy cords were placed where there were horses. This was done so they could develop an interest in raising horses. A girl's umbilical cord was sometimes placed in a sheep corral. This was done to insure that the girl would always have a good livelihood based on her sheep.

21. Things would not be the same when you perform a ceremony away from where your umbilical cord, placenta, or where

your cradleboard was offered back to the land. You would not have any kind of connection to the new area you moved onto. You should not forget where your umbilical cord was buried nor should you try to remove it to a new location. That cord is your thought, planning, and your livelihood. These were teachings that the old ones used to teach us to carry on, to build a life on these spiritual teachings.

22. People come to me and ask me to perform a ceremony for them that I know or make offerings for them. Most Dineh people know certain prayers and offerings but sometimes they need someone with special knowledge, like a medicineman to help them.

23. For many of the ceremonies that I know how to perform I need to gather medicinal herbs from this area near my home. I can only gather herbs from sacred areas such as Talahogan which is mentioned in the legends.

24. If you gather the same type of plant from a strange area it would be of no use. You don't just go and pick the herb and then use it whenever you need it. The medicinal qualities of the herbs only work if you follow the sacred Dineh way.

25. You never can gather plants in advance. When it is determined that you need a particular plant you go to the appropriate area to gather it. I can only gather the plants in special areas where I have been taught how to invoke the healing qualities by addressing the spiritual beings in the plant. If I went to a strange area I wouldn't know the proper names and prayers for the area and I wouldn't be able to invoke the special

healing qualities of the plant.

26. When you gather plants a special prayer offering accompanied by corn pollen or chips of precious stones are offered to the selected plant. By making the appropriate prayers and offerings for that particular herb and area, you invoke the healing qualities of the herbs. You tell it about the person who is sick and why you need to gather the herbs. You never gather herbs in advance, only when needed, and you only gather as much as needed for that time. Then, the herbs surrounding the blessed herbs are gathered for the ceremonial purposes. For example, when a person comes to me for a quick recovery for an injury, I need to gather the appropriate plants for the Flint Way. There is a special place where I need to go where I have the knowledge and powers to make the plants cure people.

27. The sacred sites, whether they are herb gathering areas or offering sites, all have designated names. When you make offerings you must know the place, it's Holy name, the origin of the place. If you did not know these things and did not properly address the offering place, your offering would not work.

28. When you place an offering, you should watch over it for four days. After four days is up the prayers you placed with your offerings start to work for you. When your offering is destroyed by a bad person within the four days, it is not good for you.

29. If the offering is destroyed after four days, then whoever is doing evil against you will suffer for it. It is

always important to watch over your offerings the first four days. This is the way our Creator planned our lives for us. These are some of the things the old people taught us.

30. Our ancestors have also taught us that water is life. We use it for cooking, drinking and it sustains us and gives life to us. We make offerings to water so it can protect us. There are certain sacred springs near my home where I make offerings. At these springs I pray for my family, for my children so that they will be safe and in good health. The prayers work there because I know the spiritual beings there, the origin of the spring and its holy Dinen name. It's the same way with all the offering places near my home. That is why the prayers work. I cannot make offerings in a strange place for myself, my family, or people who need a medicineman.

31. Among the cedar trees over yonder, there is an opening in the earth. It is the home of the Wind, this is where I also make my offerings. I also go to the mountain tops over there where lightning has struck to make offerings to the places where lightning has hit the ground. I also make offerings to a special place near here where the rocks talk back to you, called Talking Rocks. I make offerings to Mother Earth where I find beauty.

32. Offerings are offered as prayers for just about anything. However, we can only make these offerings at special sacred sites where it is possible to communicate with the Holy People. It is not just any place of beauty anywhere on this earth, or any spring, only certain places that have been made

down through the generations and where you are familiar with the spiritual beings.

33. Washington tells us we have to move to some foreign land. They do not understand why we refuse to comply with their law and must follow the higher spiritual laws of our Creator. Washington only knows the white man and his ways. I do not see red men in Washington, only the white man. As a result Washington treats everyone the same, like a white man. But we Dinen are different, we were placed here by the Creator, we must stay here according to the Creator's instructions and caretake the land. The Creator gave us offering places on this land, we are known by the spiritual beings here on this land.

34. We, the Dineh, are different than the white man, our religion is here on this land. The white man can practice his religion anywhere, so for him to move from one place to another does not disrupt his religion. Our religion is tied to our land, if you take us away from our land, you take away our religion. The white man doesn't understand our ways, that's why he should not interfere with our natural laws, the Creator's laws.

35. The Dinehs' sacred homeland consists of Sacred Mountains, Springs, Rivers, animal and vegetable kingdoms. Each have their special offering. Their sacredness was set forth by spiritual prayers and songs, which are preserved within our traditional legends. I cannot abandon them, that is why I cannot relocate.

36. We have always lived here. We know where to go to

make our offerings. For as long as I can remember these offering places have been here. From generation to generation, my ancestors have made offerings at these places. Our prayers go deep into our Mother Earth. We cannot just pick up our things and forget about our sacred places. I am a medicineman. I need this land here me to practice my religion and but to help people and cure people.

37. This medicine has taken me a long way and I have helped many people with it. I have used my medicine on people from all over this area. Many people could not be cured by the white man's medicine, so they traveled to my home and I performed ceremonies for them. They got well.

38. I have a responsibility to stay here and to continue making prayers, offerings and ceremonies for my people. The teachings and instructions that were taught to me would be of no use elsewhere. I wouldn't know where to make offerings, or how to properly address the sacred places, how would I call to the plants to invoke their healing powers. I wouldn't know the names of the places or the origins of the places. It is here where I know the land, it is here where I have special powers to heal people. I would be of no use elsewhere. The land is my altar, the land and all the things that the Creator placed here with are my tools to cure people. I would be of no use in a foreign land where I wasn't familiar with the land. If you took away the tools and the medicine from a white man's doctor, he would be of no use to help people. If you take me away from my land, you would be doing the same thing to me.

39. I will take care of the land given to me by my parents until I go of old age. I will always pray here for my family and others who need my assistance. That is what I've been taught by my parents and my grandparents is the Creator's law. I will never leave.

STATEMENT OF ALICE BENALLY

Before the Senate Select Committee on Indian Affiars

Hearing on S.1236

Reauthorization of the Navajo-Hopi Indian Relocation Commission

December 9, 1987

1. My name is Alice Benally. I am 69 years old. I live in a hogan on Big Mountain. I have lived there all my life. I am a member of the Nakai Dine' clan and I was born for Claushcheei clan.

2. According to the stories of our grandfathers and grandmothers, in the beginning a decision was made to have people - people were made by the Holy People. Land was given to these people. It is said that the earth was not in its present form. This is what my grandmother told us.

3. The Holy People got together and decided to have life and they made life and put it on earth. There were many forms of life that preceded each other.

4. The Ancient Ones, the Anasazi, were the first people that originated here. During that time there were many monsters that were killing the people. There was a particular

Monster that used to take people up on top of a rock and eat them there. When you go to this area you used to see a lot of heads scattered about. It's probably all been picked up by the white people. I doubt they are still there.

5. After they were all killed, there was another talk of recreating mankind. It was decided that they all would live in peace and harmony with the animals which would be created for their food.

6. After the second mankind had been created, the monsters showed up again. At that time, the first Woman (Changing Woman or White Shell Woman) had Twins -- one was related to the sun, one was related also to the water. They went to see their father, the Sun, who first gave them a hard time. Finally, he gave them arrows and eagle plumes with which they destroyed the monsters.

7. After the monsters were killed, a new creation of man happened: the Dine and other Indian nations. At that time, the Dinen were given instructions about the four Sacred Mountains and the ceremonial ways, and also about the food that they were to eat.

8. People started multiplying in numbers relying on seeds for their food. There were many plants that grew and people gathered and dried these seeds to survive. This is the way stories were laid down for us about our origin and how we came to where we are today.

9. The four Mountains were placed and also two other

mountains were placed to serve as the doorways of our homeland. The Mountains are Blanca Peak in the east, Mt. Taylor in the south, San Francisco Peak int he west, Hesperus Peak in the north with Huerfano Mountain and Gobernador Knob as the doorways. We were placed in the middle with the mountains as our boundaries. It was decided the Dineh would live inside the boundaries of mountains.

10. The Dineh were told that these mountains were their home, that they represented a hogan and this was the center of their lives in the universe.

11. After all the instructions, the people were given their food -- horses, sheep, deer and other animals native to this land. Then, all the plants were put into the ground. They all have names, they all have songs. Some of them were especially planted for the animals that were put here.

12. People were given instructions for the prayers to the dawn, to particular air that comes at noon from the south, called Nohodad't/isn, and to the last light after the sunset, and then to the darkness. All the prayers that we say, we first direct to the earth, which is our mother, and then to the sky, which is our father, and also to the sun, our father.

13. This is how we were placed here, just like the Creator placed other things on the land. We were not just placed anywhere, we were placed here with a purpose of caretaking this land. That is the Creator's instructions, to stay on our land always, and maintain the natural balance and harmony in the

universe.

14. My ancestors have been in this area since the beginning. They have always remained on and cared for this land according to the Creator's instructions. We have always lived in balance and harmony with Mother Earth.

15. Over there up on the mesas the Hopi people live. We hear Washington say these things. We have always traded with the Hopi and many Dinen have married Hopi people. They are our friends, many Hopi come out to visit us and we visit them. The traditional Dinen and Hopi share many things in common, we both follow our religious teachings which instruct us to live in balance and harmony with the land, not develop or destroy it.

16. The first Dinen people were given those instructions and they have been passed down through the generations. Now I teach the young generation about the Creator's instructions and about our responsibility to stay on our land. For those reasons I or any traditional Dinen who follows the Dine way of life could never abandon our sacred land.

17. Many centuries later, a people came across the ocean, and they said: We shall create Washington. Then they wanted to gain control over people's lives.

18. That is when our prayer ways started to be destroyed, because they were not respected anymore. Very slowly it came from the East to the West, the government enforcing their laws on the Indian people. And today, the forceful punishment is here upon our land. They are passing laws telling us to move

somewhere else. Why do they pass laws that prohibit us from practicing our religion. They go under the label "Washington." These people will destroy all life on the planet.

19. As I said, when the Creator placed us here it was with a purpose. The Creator also gave us a belief system in order to survive, the white man calls it a religion I'm told. Part of our beliefs center around the offering of corn pollen as our way of prayer. We offer corn pollen to many sacred places which have been passed down through the generations.

20. We were given places to make our offerings such as certain special places of beauty, springs and river beds. Places where tall rocks stood was a place where you could also go to make offerings. These things were given to us as places of prayer. This is the way our ancestors instructed us about our origin, that's why this land was given and placed for us.

21. We were given this place to live on and we are never supposed to leave or move from here. Plans are being made to get land for us to move to. We are told to relocate to these areas away from our homeland or our boundaries. We are told that if we ever move away from our boundaries, that would be another turning point for us as Navajos and also this would affect the non-Indians alike. Life is going to end for everyone, this is what happened to the Ancient Ones. Their lives were ended by fire. These were teachings that the Old Ones told us. For these reasons and what we know will come to us, we are afraid to move anywhere.

22. We do not want to leave our homelands. It was given to us to live on and to continue our existence as a people. The land was given to us to continue our prayers and offerings and for life to continue we were placed with our offerings here and want to continue living that way.

23. It is wrong to forcibly move us from our homes. There are some of us who do not wish to leave. Some of the things our elders used to talk about among themselves while we who are now elders were growing up. These teachings were handed to us and we want to hold on to these teachings because these teachings are the foundations of our lives. We depend on these teachings for our livelihood.

24. We want to continue working in our cornfields, we want to continue gathering the pollen from the tassel of the corn, so that we could offer it to the sun with prayers. The sun has a special place in our way of life. It is said that he was given the authority to be our leader. We offer special prayers to the sun acknowledging him as our leader.

25. We are told that the universe also has a prayer, the stars were given positions with prayers. Today we know that the stars are not in the right positions. We noticed this last winter. Because of the uprooting of our lives and livelihood, we know that these were foretold in the stars.

26. The stars were placed to give us signs and we have seen these signs already. This past winter, the stars have not been in their right position. The old people used to be afraid

when the stars got out of position. My father used to say that if certain stars were missing in their patterns, something was going to happen.

27. Even the Morning Star has been out of position lately. There are usually two stars we refer to as Morning Stars. Lately I have seen only one. I don't know where the other one went. Maybe it went off and got lost in the universe.

28. There was also another star that used to be present with the other two. I have not seen that one also. This is our situation today. We are heading towards something dreadful. I feel real strong about this and think this way. If they really drive us off the land, I wonder what the future holds for us.

29. Sometimes I think about the future based on the teachings of our grandparents. What will happen if we are forcibly removed. I think about what my elders used to say. I think and worry about it and have fear in myself. I think about my grandchildren, the ones that are now growing and for my unborn grandchildren and I am afraid for them.

30. The law in Washington has disrupted my life, my children and grandchildren's lives. The law they imposed on us is very inhuman. I think about how our lives will be if they win and we lose this struggle.

31. The way I see it now our situation is not good at all. We have no chance at all right now. They even know we are in a bad situation so they are trying hard to remove us from the

land. But for me I do not wish to comply with the law because I know what is going to happen according to the stories and therefore I am afraid to move.

32. I have no plans to go anywhere. I don't plan on moving any place that is not my land. I don't sit around and make plans like that. I don't have plans to move into a house and live in a house, because houses were not meant for us. It was made and given to the white people.

33. There is even a story that goes with the white people's houses. We were given hogans to live in and should remain like that. The Blessingway Ceremony instructs us how to build, live, and pray in a hogan. I will always stay in my hogan. They say that when everyone has moved into houses, and no longer use their traditional dwellings, that's when all the good things in life will end. When all of our traditional ways have been taken from us, that's going to be the end of our lives.

34. A white man's eyes look on the earth only as money. In the eyes of an Indian man, the earth is holy.

35. The different mountain ranges across the land, the government feels that he owns every tree of these mountains. Every tree is another dollar sign.

36. To us, it is not that way. You cannot break off a branch of a tree without permission. The earth is not for sale.

37. We are related to the land, the earth is our mother. We are known by our land here, and the land knows us. We know where to go to make offerings and gather plants for

ceremonies and where not to go so to avoid bad spirits. Our life is here, our religion is here not somewhere else.

38. When we make prayers and offerings we pray to the spiritual beings. The spiritual beings know us so they communicate our prayers to the Holy People. That is why our prayers work, we are known by the spiritual beings.

39. We do not know the spiritual beings elsewhere only here. That is why we must stay here. The spiritual beings are introduced to you in the very beginning of your life.

40. When your mother is pregnant she may have a Blessingway Ceremony so that she will have an easy child birth and that the child is born in good health. During the ceremony prayers are made to the spiritual beings for the child. In that way the relationship with the person and the spiritual being begins before birth.

41. You also offer the Placenta to a young tree. You wrap it in something and you take it and make an offering of corn pollen and place it within the tree. You pray asking for a good life. If it was a girl's placenta, then you would pray that the baby girl would grow up to become a weaver and a good corn grinder.

42. The same thing was done for the boys. You pray for a good life and that he would have livestock and be a good supporter.

43. The male placenta was offered back to the cedar tree, the female placenta was offered back to the pinon tree,

because we believe the pinon tree is a female.

44. We also offer the afterbirth to a tree which creates a life long bond between the person and that tree. You must see that no harm comes to that tree because if it does it may endanger you. In that way you are also introduced to the spiritual beings of the area. Prayers are continually made for the child through the spiritual beings to the Holy People for the health and welfare of the child.

45. When a baby is born, the Holy People give it speech and thought. Life is also given to this baby when it is born. A baby is a gift from the Holy People.

46. When a baby is born, whether it is a boy or girl, prayers are offered for the roles that they will have. For the livelihood they will have as a young boy or girl. The Holy People receive these prayers.

47. All of our prayers and offerings can only be made at particular places where it is possible to communicate with the Holy People. These sites are sacred. We cannot bring them with us if we move. That is why we must stay here where our offering places are.

48. We make offering to many different types of places such as buttes, mountains, rocks, hills, flat areas, springs, etc. But we cannot substitute any rock for the rock formations that are sacred to us, we cannot substitute any butte for our sacred buttes. Only at the places where we know the spiritual beings and only places where certain conditions occur where it is

possible to communicate with the Holy People can we practice our religion

49. Here on our land we know the spiritual beings. Here on our land we know where the special conditions occur such as rocks that talk back to you.

50. This grass right here, when it grows in a ring, that is where we offer. We also offer to a certain formation of rocks -- Tsennadjinn or "Talking Rocks." Also to the open land. But not just any open land, grass in a ring, etc., but where we know the spiritual beings and where the conditions are right and the Holy People will hear our prayers.

51. The north point of Big Mountain is a main offering place. Long, long ago there was a hogan there. Some anthropologists dug into it a couple of years ago. Some of our own people must have shown them. We are not all the same in our heads. Some only think of Washington.

52. This is the way the Creator instructed us. Every day you make offerings upon her, in the morning, afternoon, and in the evening. Any time you feel troubled about something, you make an offering and pray about it.

53. The Little Colorado River we believe is a woman, it's a place for offerings. Before you cross that river you make an offering then you pass over and proceed on your way. Every offering place has a name, you call upon their names when you make offerings. Even the rivers that overlap each other by Grand Canyon has a name. The one on top is a male river, the one on

the bottom is a female river. When you go there you can also see a rainbow above the rivers. We make offerings in many distant places. We believe in these sacred offering places.

54. We make offerings to certain mountains also. They are Holy places placed by the Holy People. We believe in these places, therefore we pray at all these places. We just don't pray to one place. There are many places at which we make offerings. Even right around here there are many places to go to make an offering and pray.

55. These places are sacred to me, it is here where I can communicate with the Holy People, not somewhere else. These places were placed here for us by the Holy People.

56. If we are to make our offerings at a new place, the spiritual beings would not know us. We would not know the mountains or the significance of them. We would not know the land and the land would not know us. It would not be the same as our own homeland. We would not know the sacred places, we would not know the names of these places. If we were to go on top of an unfamiliar mountain we would not know the life forms that dwell there. It would be a strange place for us.

57. I visit the sacred sites on my land on a regular basis. Each site has a purpose and I pray there or make the appropriate offerings depending upon the situation. Some types of offerings we make several times a day such as offering corn pollen at dawn, noon, and at dusk outside my hogan. I make these offerings every single day. How could I live somewhere else and

still make my offerings three times a day at my hogan. I must make these offerings outside my hogan, so how can I move somewhere else.

58. I make offerings at the other places I mentioned before too. I cannot tell you where these places are because that is sacred knowledge. But these places are sacred to me, I cannot practice my religion anywhere else. Some places such as the spring or rock altar near my hogan I go to and pray or make offerings for my children, I go there very often. Other places I pray for my livestock, etc.

59. All of these places were given to us for a purpose. I visit these places and pray there on a regular basis. You cannot take these places away from me or me away from these places. I do not take the white man away from his religion.

60. This law that was imposed on us had a great impact on the elderly women like me. We suffer from all kinds of ailments. We ache all over and we do not have strength because we think about what's being imposed on us all the time. It's our daily thoughts and making us sick.

61. It is a hardship for us and not good for us. Plans of removal are being talked about without consenting us.

62. This law that was imposed on us, we can pray about it as something we just imagined or maybe it was just a mirage. Something we thought we saw or something that's not realistic. We can make offerings in this way. Offerings are made so that bad dreams will not happen.

63. If you dreamed that one of your relatives had died, you pray for that person to live to reach old age. You pray so it wouldn't happen. If you imagined something, you can also make offerings.

64. There are many spiritual beings you can make offerings to. You can never tell all about it. There are many ways to make offerings for various reasons. This is the way we were told and we tell about these things in the same manner.

65. The Earth was made our Mother, therefore you can make offerings to her to pray for yourself. The four mountains that I mentioned was originally placed in the form of a hogan. The four main poles were positioned in the same way the mountains were made. The two doorway poles were also placed as the two mountains that make up the doorway. We were placed inside here to live.

66. Sometimes I lay awake at night thinking this way. I think about this so called Washington. What kind of being is it. This Washington is very tricky and manipulative. What kind of being is this Washington, always making plans that are inhuman for us. He just plans and plans without thinking that we are human beings and that we are alive.

67. Washington has come and taken away all our sheep. Washington doesn't let our children build new homes. Washington doesn't have any heat. Do they realize the problems these programs cause, how these things affect us? How can we survive without our sheep? I used to have hundreds of sheep, now I have

so few. How can I survive, what are we supposed to eat?

68. We survive on our livestock. Now that Washington has impounded most of our livestock, I wonder if we can survive. Maybe that's what Washington is trying to do, kill us, or starve us off of our land. This is the same thing that my grandmother used to talk about when she told me stories about Kit Carson and the Long Walk. She said Kit Carson killed our livestock and forced the people into surrendering into captivity. That is how I see it now. They took away my grandparents means of survival and forced them to surrender, some hid out, but most people were captured. The livestock impoundment is trying to force the same thing upon us. They take away our means of survival and force us to do what we don't want to. This land is sacred to me. I can never leave my land. Why is Washington tying to starve me off my land.

69. Our Mother Earth, her inner being, the way she is dressed is of coal, gold, silver, and uranium. She was dressed in all these precious minerals when she was created. She was given and blessed with the beginnings of life.

70. Upon her, life was to continue in many forms for generations and generations. Today you see mining of various forms digging and taking out minerals from within her body. When they have taken every ounce of minerals from within her, maybe she will just shrink.

71. The minerals in her body is what she is made of and it gives her life. The coal is her liver, every mineral was

given a place in her body as part of her organs. The earth was made just like us with a heart, liver, stomach and intestines. We were created like her. She is our mother.

72. This is what our grandfathers and grandmothers taught us while we were growing up. They said that if there was ever a time in our future when we were to experience these things, it would not be good. What they talked about we are experiencing today.

73. We would as a people become weak. You hear about this every day. People are giving up. I think today we are heading for and dealing with events that our elders talked about. They are happening now, I see it every day.

74. The white people want to be the only ones to live on this earth and own it. They want to dig into her and destroy her. The white people work daily to implement this plan of destruction. He keeps digging, digging. I wonder when he's going to completely destroy her.

75. The things that we respect are being destroyed by the mining and drilling. All the things that they dig out, are part of the earth. And our religion is connected to these things.

76. After they dig out all these things the earth will collapse. It is like your own body, if somebody would take out your heart, your lungs, your stomach. The same will happen to the land. It will collapse into nothing but water. That is what they are digging for.

77. Today, Washington is in charge of everything and does not respect our ways. Whenever people talk about their rights, they get punished. Police is sent after them. All the native people are oppressed. I wish we could all get together and write a paper about it. We do not have a word for relocation. It means that a person dies and is never seen again.

78. Maybe the only way that our prayers will be strong again is to send Washington back to where they came from, back across the ocean. They are even messing with some of the most sacred things such as lightning. They make electricity. In every home around the country there is a lightning system now, lighting up white people's homes. Even little toys run on electricity. What I believe is that even lightning is their slave now. But I do believe strongly that one day the natural powers will be strong again.

79. What all the so-called leaders are looking for is to starve us out. Today, the forceful punishment is here upon Dinetah. They treat us like little children who don't behave themselves. A lot of people who are treated that way have white hair. Our Elders are not respected anymore.

80. I hear that they are going to have armed police drive us out of our land. I don't even know where they are going to take us. I hear this every day and today. There's no doubt that that's what is going to happen. When they'll take us, I don't know.

81. The government is violating our religious ways,

where our offering places used to be. They are trying to take our religion away from us. Everything we do comes with a song and a prayer. Washington can never take that away from us, no matter what they try. We will resist to the very end and defend our sacred land, preserve our religion. In the Dinen way, everything comes with a song and a prayer.

STATEMENT OF KEE SHAY

Before the Senate Select Committee on Indian Affairs

Hearing on S.1236

Reauthorization of the Navajo-Hopi Indian Relocation Commission

December 9, 1987

1. My name is Kee Shay. I am from Big Mountain. My maternal clan is Tabaaha (Edgewater) clan and my paternal clan is the Salt clan.

2. In our way, we have been taught that the sun rises and the sun sets. There is day and night with their own path. There is no way anyone can change that. The Dineh, especially the traditional elders, are like that too; we cannot change. We were placed by our Creator on this land between the four Sacred Mountains not somewhere else, we were given the responsibility to caretake this land by the Holy People, not some other foreign land where we are not known. Washington tells us we must relocate elsewhere, but

Washington does not understand why we must stay here. My land is sacred, it is what you would call my religion, no one, including Washington, can take that away from the Dinen. We will never leave. Just like the sun rises and the sun sets some things cannot be changed. We Dineh were placed here and we will not go, even Washington cannot change that. The Dinen were created by our Holy People with sacredness, prayer, and ceremony. These things were created for the Dineh here on earth. We live within our sacred mountains, we live according to our sacred songs and prayers; it has always been this way. From the beginning of time up to now the Dineh people have lived according to our spiritual instructions.

3. Now we are told, you who are named here, move out. This order is from Washington and is trying to separate the people from our homeland. This is an evil thing which violates the natural laws. By what power or natural right does he make this demand. He does not know our natural laws that the Creator has instructed us to live by. The elders, the men and the women, with their children, live first by this natural law, the Creator's law, that is passed on from one generation to the next and it has been this way from the beginning of time.

4. From the beginning of mankind, Big Mountain was here. We are not going anywhere; we live in balance and harmony with

the land here. This is the way it is. If we want to make a garden, a house, the Creator and the spiritual beings know us this way and accept us and watch over us. Through prayers and songs from the beginning, the Creator knows us. Washington can not know or understand our obligation to perform our ceremonies and prayers each and every day here on our land so that we carry out this responsibility to those of the other worlds.

5. Leave us to our prayers and our way of life. This is better for us. Because of this we live in a holy, sacred environment. The plants are our healers for all kinds of ailments that we have. We have not forgotten these, nor have we outlived them. In this way they do not forget us and they heal and protect us.

6. The nurse at IHS hospital works very hard to cure us and gives us cough drops, but they are not effective. They cannot heal us; we have our own herbal cures. It is here we know how to use the herbs, how to bring out the healing powers of the herbs by calling to the spiritual beings of the herbs. We cannot use herbs in a foreign area where we do not know the spiritual beings. They would not hear us.

7. This law that was passed must respect and allow for those who are sincere in their religious practice, and in that way consent to let the traditional people remain in their sacred

homeland. This is best for all.

8. When you take these statements to Washington, maybe then they will understand and realize that we live by the divine laws that are given us by the Creator of all things. Then they will know that our boundaries are within the four sacred mountains and two sacred rivers. Without this knowledge, how can you ask someone to leave his home. It is against the laws of nature. How is it that Washington can do a thing like this?

9. Maybe if we teach the white man a little about our sacred way of life, they will understand how we have these special spiritual ties to our land and now we can never leave our sacred homeland. The white man can practice his religion anywhere, he does not know the earth. The Dineh are different, the land is sacred to us, we cannot practice our religion elsewhere, only on the land where we are known. Even though we are different than the white man, they try to treat us like the white man and move us all over the place. Washington does not understand us. That is why I am making this statement so that Washington will understand us and how our land, our religion, our lives are all one living thing which can not be undone. That is why we cannot relocate.

10. When the white man talks of relocation he talks of finding a new place to live, a new job, a new place to pray to his

God. The land where he inhabits is a stranger to him so it does not matter if and where he relocates to. The white man has destroyed most of the native people in this world, now he has come for us. We will not go.

11. The land is my relative, we are one, we are all connected and interrelated. The Creator placed the Dine' between the sacred mountains. But we are not alone, we live among and are related to all creations. The earth is our mother, the sky is our father. We are related to every living thing, and even the clouds, the buttes, springs, rocks; they all have spirits and they are also our relatives.

12. According to the Creator's instruction, the universe is in balance and harmony. Everything has a purpose. The Creator placed me here as caretaker of this land. Sometimes things may go out of balance, and if we are not there to repair the balance, who would? If we were not here to call to the spiritual beings to return the balance, the Holy People would miss us, they would know something is wrong. The Holy People would see that there were less Dine' people on their land they would show signs to the Dine' such as bad problems in the Universe to make people realize why they can never leave their sacred homeland. I see those signs of imbalance now. That is why I cannot leave, I must respect the Creator's law. The laws made in Washington are made by five fingered beings. These beings are only human beings like

us. We can not follow the words of another human being against our Creator.

13. Here on our land we are familiar with the springs, rocks, mountains, hills, etc., they are familiar with us. We cannot forget these places and find new places. We do not just know these places but the spiritual beings at these places. We have been introduced to these places before we were ever born. It is like your family, you must stay with these places, these spirits. You could not leave your relatives if they were sick - it is in this way that we must stay with this land, our relative. It is in this way that each day I come to know my relatives here a little better. This is how we know the spiritual ones from our birth.

14. When the woman is pregnant, she will have a Blessingway ceremony performed for her and the unborn baby so that she will have an easy birth and the baby will be born in good health. At that time the unborn baby is introduced to the spiritual beings and begins to know the spiritual beings.

15. We perform many different things when a child is born so the child will be familiar with the spiritual beings of the area. At birth the woman offers the afterbirth to a young tree and buries the child's umbilical cord in Mother Earth. These things create spiritual ties between us and

the land.

16. The same thing with the cradleboard. We make a cradleboard out of a cedar tree to hold the child close to all things that are important to the Dine' people. The bottom of the cradleboard represents Mother Earth and Father Sky. On the top of the cradleboard there is a curved piece of wood which represents the rainbow. The board at the bottom represents the sacred mountains. The strings represent lightning. In this way the child is held close to all things important to the Dine' people.

17. All of these things create spiritual ties between us and the land. That is one of the ways we are known here, by the spiritual beings. We know the spiritual beings at our offering places here, in the springs, rocks, buttes, etc. We cannot make prayers at any spring or rock, only the ones where we know the spiritual beings. These places are sacred to us. We cannot practice our religion anywhere else. For the white man they say he only knows his Creator for one day in the week. For him maybe this is enough. This is not enough for the Dinen. We are in our church every minute that we live or breathe. These things the whites cannot understand.

18. We are familiar with our land. We know where to go and where not to go. There are places where dangerous spirits

may exist such as burial sites. Those places must be avoided and should not be disturbed. If I relocated I might disturb one of these places without knowing it, then I or my family will suffer and die. If this would happen I would not know the plants, the songs, or the spiritual beings inthat land and would not be able to cure us.

19. We also wouldn't be able to make our prayers. There are certain places that are sacred to us, these places have been passed down through the generations. We are familiar with these places, we know the spiritual beings at these places, we know how to use these places, we cannot leave them and go to some foreign land where we are not known. It is only in these places that I know, that I can be heard with my prayer.

20. Our religion is here, on our land, not somewhere else. Big Mountain is a shrine where sacred sacraments are offered from the beginning of time. It is also a place where we gather many of our medicinal herbs. The natural springs on the mountain are also shrines where we offer many corn poll[illegible]. We the inhabitants of Big Mountain live this way. Laws have been passed against us, fences are strung around us, our livestock are taken away from us, and yet our expectations of life are different, for we seek harmony and compatibility which is the way of our ancestors.

21. We pray without ceasing for our survival here, not somewhere else, we have no thought of relocation.

22. The people who have relocated out of their sacred homeland have suffered a great deal, and many have returned to their former homes. This is the path of relocation for those who have consented, but for those who follow the Creator's law and stay on their homeland, they have also suffered a lot because of the threat that someday they will come and remove us from our sacred land. We have also had our lives injured by the government who has stolen our livestock and who tries to make us live in old homes that we can not repair so that the old ones and the children are always sick.

23. If you have knowledge of Navajo sacred way of life, how can you not know what it is to relocate somewhere else. How would one pray to the Creator when you have broken the Creator's law in order to follow the white man's law? Tell them you have our views on your paper.

24. For many years now we have lived under the threat of relocation. Our livestock have been impounded, we cannot build new homes, we feel as if any day they may come and drag us away from our land. I cannot live like this. It's been long enough, the deadline for relocation was in July of 1986, over a year and a half ago. We are still here and will always be here.

25. Life is hard here now that Washington has taken away almost all of our sheep. Sometimes we think we may not be able to survive because we have so few sheep to eat. But I will never relocate, never abandon my sacred lands.

26. Allow us to live and practice our religion, the ways of our ancestors. I believe what I have said. What I have just told you would not be any different from what the other elders would tell you, for the record these are my thougnts.

27. I tell the young people to persevere, aspire to learn and discipline yourself in the sacred philosophy of our ancestors. In a time when there is more encouragement for the white man's education and employment, I encourage you to persist in your knowledge of the self. This is the Dineh way.

28. Many of our young have pursued white man's education and jobs but struggle endlessly with it. Therefore there are many of our young who are illiterate in our way. We observe these young people, who we are told have been educated, roam aimlessly and seek mischievous activities, abandoning their elders and their parents to struggle with survival.

29. There is a need to evaluate the type of education that is offered the youth and seek alternatives on how to strengthen their moral values.

30. According to our religious philosophy, if the prayers, songs and practice of rituals are observed, these harmful or evil activities would not occur among our youth because the Creator has laid a firm foundation to guide them. These are the lessons that the old ones teach us.

31. All of this Washington is trying to destroy. He takes us away from our land, he destroys our culture and ultimately our people. Our land is our way of life, our religion. It is why we are here, why we live. We will never abandon our sacred land. We have no thoughts of relocation.

KEE SHAY

SUPPLEMENTAL TESTIMONY

of the

NAVAJO NATION

before

THE SENATE SELECT SUBCOMMITTEE ON INDIAN AFFAIRS

on

S. 1236, as AMENDED,

A BILL
REAUTHORIZING THE NAVAJO AND HOPI INDIAN
RELOCATION COMMISSION

January 15, 1988

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APPENDIX

A. PROPOSED COMPREHENSIVE DEVELOPMENT PLAN FOR THE SANDERS/CHAMBERS TRUST LANDS

B. RESOLUTION OF THE SANDERS/CHAMBERS TRUST LANDS AD-HOC COMMITTEE

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OVERALL NAVAJO TRIBAL POSITION ON THE McCAIN AMENDMENTS TO S.1236, A BILL REAUTHORIZING THE RELOCATION PROGRAM

The Navajo Tribe supports the initiative offered by Senator Inouye, with the amendments proposed by Senators McCain and DeConcini. This bill, with its proposed amendments, addresses some of what we feel needs to be corrected in the relocation program. We are offering our support and cooperation; we have some modifications which we feel will make this bill even more effective. We also are entering testimony documenting our reasons for supporting this bill, specific failures of the relocation program, and our suggestions for correcting these problems.1

The Tribe first must caution Congress that this bill will not solve the dispute. Among other things, it does not address these specific issues:

* The needs of Navajos who cannot and will not relocate voluntarily
* The potential claims of certain Navajo tribal members claiming to be of Paiute descent
* The 1934 boundary issue and litigation
* Ending the Statutory Freeze
* Ending the eight lawsuits between the Tribes
* Permitting the normal and free economic growth of both the Former Joint Use Area and the Statutory Freeze area.

We ask that Congress allow the Navajo and Hopi Tribes the opportunity to negotiate a comprehensive settlement of these issues. We support adding language to the amendments which will provide incentives for both Tribes to negotiate a comprehensive settlement of the land dispute. We ask that Congress recognize that further legislation will be necessary if negotiations prove unproductive.

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1 The Navajo Nation submitted written testimony on many of these matters on December 9, 1987. The following materials supplement that earlier testimony.

COMMENTS ON THE McCAIN AMENDMENTS, POINT BY POINT

I. The proposed amendments would create a single commissioner within the Department of Interior, to improve accountability and reduce administrative costs.

The Tribe is in favor of this provision. Because most of the families remaining to be relocated are Navajos, we believe we should be consulted on the nominee for commissioner. Because the Bureau of Indian Affairs is a trustee for both the Navajo and Hopi Tribes, great care must be taken, if the Commissioner serves under the Secretary of Interior, to avoid intradepartmental conficts of interest and competition for funding. Placing Relocation Commission staff under civil service will help correct previous abuses of personnel and funding.

Given the fact that hundreds of Navajo families are adversely affected and millions of federal dollars are involved, we feel that the amendments should go into effect immediately. The Relocation Commission and the Bureau of Indian Affairs should be directed to institute a transition plan at once.

II. The amendments place limits on the employment of outside legal services by the Commissioner. The existing Commission structure provides for the employment of both in-house and outside legal counsel. The Tribe supports limits on the use of outside legal counsel, and suggests further that such counsel be limited to providing civil legal assistance to relocatees and persons awaiting relocation. We request that the Commissioner contract with the Navajo Tribe to fund legal services to relocatees.

Currently the tribe provides legal services for over 1,200 relocatees and land-dispute-affected clients. Because of the effects of relocation, livestock reduction, and other aspects of the land dispute, this population has much higher than usual legal service needs. Families require assistance in handling domestic disputes, livestock impoundments, construction permits, and liens, seizures, and foreclosures on their relocation homes. We feel that providing such assistance should be the responsibility of the relocation agency.

III.

A. The amendments require that two reports be made to Congress. The first of these, due six months after passage of the bill, requires the Commissioner to prepare a census of all members of the Navajo or Hopi Tribe who reside in the Former Joint Use Area. This report must list the names of all the members of either

Tribe residing in the partitioned lands, show the locations of their households, and inventory their property.

Much of this information is subject to debate. When the Relocation Act was passed, Congress estimated that only 775 Navajo families would have to be relocated. As the Relocation Commission pointed out in its oral testimony, no actual enumeration was conducted. Even by the lowest counts, we find there are nearly four times as many families affected by relocation.

To determine the facts in these matters, the Tribe wishes to enter into a joint effort with the Commissioner to prepare the enumeration and inventory of property. We would also like a clarification of what Congress means by resident. Congress delegated the responsibility for defining "residents" of the HPL to the Relocation Commission. According to Commission's oral testimony, OMB recommends that residence be defined as "legal residence." It is our opinion the Congress should clarify its intent, and that the definition of residency adopted should encompass the legal concepts of domicile, which Black's Law Dictionary defines as:

> That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning ..... The permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere ..... The established, fixed, permanent, or ordinary dwellingplace or place of residence of a person, as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily take him.

We would like to call attention to the similarity between Black's definition and Navajo customary practice in this matter. Public Law 93-531 never defined "residency." As stated above, the law authorized the Relocation Commission to define eligibility for relocation benefits. The Relocation Commission defined residence thus:

> Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of 12/22/74 of the lands partitioned to the Tribe of which they are not members.

This definition recognizes neither tradition or the legal notion of domicile. The use of this definition to determine eligibility for relocation benefits denies them to many people having strong traditional ties to the land. We recommend that families showing ties to the land which fit the notion of domicile should be eligible for benefits under the Relocation Act.

The second report, to be produced within one year, is to be a detailed plan identifying relocation sites, assuring that utilities, roads, schools, and essential services are available at these places, and outlining actions to provide employment training and economic development for the relocatees.

Because the twelve-month plan will guide major development initiatives on the Navajo Reservation, including the Sanders/Chambers Trust Lands, the Tribe wishes to join the Commissioner in preparing it. We ask that the amendments contain language that will allow the Navajo Tribe to be a full partner in this planning process. If our request is granted, site planning and planning for the provision of housing, infrastructure, social services, and economic development can begin with the new fiscal year. A preliminary outline showing what the Tribe feels should be addressed in this plan is included in the appendix to this testimony.

The proposed amendments would allow BIA and NHIRC to continue developing the Sanders/Chambers Trust Lands through the rest of this fiscal year. If these agencies are given another year to develop the "New Lands" in the absence of a comprehensive plan, it will be that much more difficult to provide:

* Sites for tribal and other government offices and community facilities. For example, current plans would virtually preclude the siting of a high school in the NHIRC's New Lands Rural Community.
* Economic development sites and infrastructure, which will be foreclosed by decisions now in the process of being made by NHIRC.
* Additional grazing lands needed for those who have already relocated. The Tribe feels strongly that relocation grazing permits should be sufficient to provide subsistence for the relocatee families, most of whom are jobless. Since the "New Lands" range units to which people have moved are now grazed to capacity, increasing the size of existing permits will require redrawing the boundaries of already-settled range units. If neighboring range units are filled up, this option will no longer be available.

Further construction and development on the Sanders/Chambers Trust Lands should not be allowed to proceed until a tribally-endorsed comprehensive plan for these lands is completed. We feel this could be done in the one year period allowed for the detailed relocation plan. Attached is an outline of our specific comments on "New Lands" planning and development, and a detailed program for a comprehensive plan.

In the meantime, existing funding and personnel resources can be applied to the needs of the relocation-affected population, with these priorities:

1. The first priority is to provide services and repairs to existing relocation homes on the NPL or elsewhere on the Navajo Reservation.

2. There are families who relocated off-reservation but were unable to adjust to conditions there. Many of them have lost their homes or are suffering great hardships. These families should be provided such assistance as necessary to mitigate their relocation-caused distress.

3. Many families who have been certified for relocation now live in overcrowded or dilapidated temporary housing outside the HPL. Many of these families left the HPL in order to avoid hardships imposed by livestock reduction, construction prohibitions, and other problems associated with the land dispute. Their hardships, which in many cases resemble those of the urban homeless, must be alleviated.

4. Approximately 285 eligible families, who already have approved homesite leases, are ready to relocate. In order to ensure effective integration of these families into their host communities it will be important to provide adequate services and infrastructure as required by section 13 of Public Law 93-531.

We feel that the relocation program must be carried out in a humane fashion consistent with the law. In order to accomplish this, the law must first adequately adequately serve those who have relocated and those in the process of relocating.

V. The amendments empower the Commissioner to authorize construction in the Bennett Freeze area, except for new housing, if he or she feels that it is necessary for the health, safety, or general welfare of the Navajo or Hopi Tribes, or of any member of either tribe.

The Navajo Tribe assumes that this prohibition on new housing construction does not preclude replacements of, or additions or repairs to, existing homes. Court orders in effect on the Hopi Partitioned Lands currently permit such construction without tribal consent. A similar exception to the restriction on housing construction is essential for the health and safety of Bennett Freeze area residents.

The Tribe would like to stress its belief that the statutory development freeze is a serious invasion of basic human and property rights, and that it is broader than necessary to achieve its purposes. The Tribe affirms its request that the freeze be repealed as soon as possible, as part of a comprehensive settlement of the land dispute.

VI. The amendments repeal Public Law 93-531's provision for payment of legal fees, costs, and expenses for land dispute litigation by either tribe. Continued litigation serves only to further complicate the dispute, and is costing the federal government a great deal of money that could be better spent in resolving it. Therefore, the Navajo Tribe supports an end to federally-sponsored litigation of the land dispute.

ON NEW LANDS PLANNING

The material in the following pages addresses specific concerns of the relocatees and the Navajo Tribe regarding the past planning of the relocation program by the Bureau of Indian Affairs and the Navajo and Hopi Indian Relocation Commission.

Assistant Secretary Swimmer made a number of assertions in his December 9 testimony before this committee. He stated that developing the "New Lands" was a "slow process," not one where BIA "simply went in and struck at it," implying that BIA has carefully planned each step it has taken. He asserted that BIA has consulted closely with the relocatees in developing its plans. He stated that relocatees will be able to maintain their traditional pastoral lifestyles on the "New Lands." He stated that relocation is almost complete.2 These assertions are simply not supported by the facts.

Now as in the past, developing the Sanders/Chambers Trust Lands -- the "New Lands" -- is a task that the agencies in charge of relocation simply are not up to doing properly. The Relocation Commission spent $100,000 on its draft general plan, circulated it for comments, then threw the whole document out. It spent $50,000 or more, and six months, developing conceptual plans for a vast subdivision for Navajos, then abandoned that plan also. The Commission assured the public that there was an unlimited supply of good water. It produced the totally inadequate "Pink Plan" as the end product of all its thought and effort. It assured Congress that it would "clear the HPL" by the July, 1986 deadline; all it needed was just a little more money.

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2 Relocation Commission testimony made it clear that fewer than one-half of those Navajos eligible for relocation have received benefits. It is true that, in order to make a living, a significant number have been forced to leave their homes on the HPL before receiving benefits. Unless the Assistant Secretary is suggesting that Congress abandon its commitment to provide these people with benefits, relocation is far from over.

BUT HASN'T BIA CLEANED UP THE RELOCATION MESS, AND GOTTEN THE PROGRAM MOVING AGAIN?

Things have not changed much with the entry of BIA. BIA/NHIRC still exhibits the same pattern of behavior -- build first, plan later. Witness the first relocation house, which still sits empty at Parker Draw; the "road to nowhere;" homesites that flood; homesites where the water supply is unfit to drink; homesites to which they are unable to secure right-of-way. Assistant Secretary Swimmer would have Congress believe that BIA was prudent and deliberate in planning and developing the "New Lands"; ask him about his hastily-executed and disastrous Relocation Pilot Project. Each of these cases is a symptom of an underlying institutional failure: the refusal to develop a comprehensive plan and follow it, step by step.

In each case, the remedy has been to go in afterward and do the work over. In one case, a new home sits empty while its intended occupant has a second home built, and a homesite area is designated "because we built the road there anyway." In another case, almost four miles of water line had to be laid to provide a "temporary" water supply to a homesite area that was designated before BIA/NHIRC had performed tests on its well water. In another case, development is on hold for almost 20% of the New Lands area because, while no one bothered to secure a direct road and water line right of way into the Chambers Ranch, homesite areas were planned as if there was one.

In its most recent work, the "rural community" the Task Force has begun to recognize the importance of planning, but has not shown that it is going to produce a comprehensive plan. One searches the preliminary plan maps in vain for commercial sites, for sites for tribal offices and facilities, for a landfill, for borrow pits. A main road curves sinuously through the middle of the only possible site for a high school. What is being produced is in many ways an excellent residential subdivision for Navajos, but it is not a community. It does not have dedicated sites for the schools, shops, meeting places, places of employment, playgrounds, parks, government offices, and other institutions that distinguish a community from a housing project.

The major change brought about by BIA is that now irrevocable commitments of land and resources are being made and options for rational development foreclosed. The physical planning of the "New Lands" is being mishandled, land and resources squandered. More importantly, those who relocate to the New Lands are left there without services, without jobs, and without enough livestock to even survive. Who is going to take responsibility? Who will repair the damage?

BIA/NHIRC DOES NOT CONSULT WITH EITHER THE NAVAJO TRIBE OR THE RELOCATEES

Public Law 93-531 and its amendments require that planning incident to the relocation program be carried out in consultation with the relocatees and with the Navajo Tribe. BIA/NHIRC has ignored both the letter and the spirit of this requirement from the start; presently, the Navajo Nation is completely frozen out of the planning process. It took a court order to force BIA/NHIRC New Lands Task Force to even produce written progress reports; we are not consulted in any meaningful way. Even now, when the Tribe asks for simple sharing of information, we are told to file a Freedom of Information Act request! This is consultation?

Assistant Secretary Swimmer described to the Committee how BIA/NHIRC "let them (the relocatees) help us develop the range units .... (and) where the homes could be located and the configuration of those developments that were going to house the Navajo people." In reality, BIA/NHIRC abandoned a participatory planning process in which relocatees planned their own homesite areas and decided for themselves where they would live because it was taking too much time. Relocatee requests to reserve space adjacent to their own rural community homes for members of their extended families have been denied as a matter of policy. When they ask for a community center where they can meet and receive essential services, the relocatees are told to build it themselves. As their community resolution included in this testimony indicates, once the relocatees are on the "New Lands", they are finished business and no one at BIA/NHIRC is willing to listen to or act on their complaints or problems.

The New Lands Task Force frequently acts without tribal consent in matters that directly affect tribal interest on trust land. Even tribal comments, usually solicited after the fact, are difficult to make, since Task Force proposals come in as a blizzard of paperwork. In the absence of a comprehensive development plan for the "New Lands", the Tribe has no rational way of evaluating individual proposals and actions.

The Navajo Nation is still waiting to see a comprehensive, rational plan for the "New Lands," and indeed, for the entire relocation program. We repeat here our offer to work as equal partners with the new Commissioner in preparing comprehensive, rational plans for the "New Lands" and for the relocation program as a whole. But the Tribe cannot concur with plans which are inimical to the interests of the relocatees, and which are made secretly and in defiance of its regulations, procedures, and the expressed desires of the relocatees.

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BIA/NHIRC HAS NOT PROVIDED FOR THE ECONOMIC NEEDS OF THE RELOCATEES AND HAS NO PLANS TO DO SO

The Tribe looks in vain for BIA/NHIRC's economic development plans. Their studies, released in 1984 and 1985, suggested a number of development options and stressed the importance of furnishing accurate, believable local information in a timely manner to business firms. These studies stressed the importance to industrial and business development prospects of accurate information about local infrastructure, resources, labor pools, and markets. BIA/NHIRC refused to consider a proposal from its planning contractor for comprehensive economic development planning in 1986. It is now 1988, and the only study undertaken to date is an unreleased draft -- a "confidential study," really nothing more than a list, of existing employment opportunities.

In fact, BIA/NHIRC planning and development actions are foreclosing options for business and economic development. To cite instances, NHIRC has entered negotiations which would turn over forty acres at a prime business/industrial location to the Sanders School District for thoroughly inappropriate use as a school site. The "New Lands" permanent water supply is not designed to meet even the needs of light industry. There is no provision for industrial or commercial sites, services, or infrastructure. Police and fire protection are as necessary for industrial and commercial enterprises as they are relocatee homes. Yet BIA/NHIRC has no plans to provide such protection and has given no thought to developing and training the "New Lands" labor pool.

BIA/NHIRC blames its failures on an alleged lack of cooperation by the Tribe. In fact, these agencies have refused to consider any of the Tribe's proposals for cooperative assistance in any of these matters. The Navajo Division of Labor first submitted a proposal for relocatee job training in 1985, to no avail. As of today, a Job Training Partnership Act appropriation secured by the Tribe specifically for the "New Lands" is in the process of being lost because BIA/NHIRC was unwilling to even sponsor job applicants. BIA/NHIRC has refused also to consider a fire protection contract with the tribe, preferring instead to contract with the local volunteer fire company. The fact is that BIA/NHIRC has spurned or ignored virtually every offer of help from the Navajo Nation.

Completing the necessary economic planning studies will take at least six months after the intitial contracts are let, yet BIA/NHIRC has apparently not even requested proposals for such studies. Meanwhile, after two years of "New Lands" planning and development, not a single commercial or industrial development

site has been designated. BIA/NHIRC has not even put together a budget estimate or funding request for these purposes.

In lieu of rational, planned economic development, BIA/NHIRC offers scams and schemes. NHIRC Chairman Atkinson at one time proposed that the relocatees farm catfish. We now have from BIA a more credible suggestion that perhaps a free-trade zone will bring prosperity to the underdeveloped Sanders/Chambers region. This may well be a sound idea, but it is one that will take years of study and a sustained investment of money and talent to implement. In the meantime, the relocatees are offered temporary, unskilled jobs on fencing and construction crews - then promptly laid off as BIA's fencing contractor replaces them all too often with non-relocatees.

The one thing BIA/NHIRC could have done to ease economic hardships for New Lands relocatees is to grant a subsistence-level livestock permit to each family. It has refused to do so. Contrary to his testimony that relocatees would be able to maintain their former subsistence lifestyles on the "New Lands," Assistant Secretary Swimmer decided in a New Lands Task Force meeting to issue "New Lands" grazing permits which cannot possibly support a family. When making the decision, against the advice of the Navajo Tribe and his own in-house range management expert, he stated that he "did not agree that a subsistence level (grazing permit) was required by the law..." or that "participation in a particular type of business guaranteed the participant to a certain standard of living..."[3]

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[3] (New Lands Task Force Meeting Notes, 9/22/86, pp. 3-4)

BIA/NHIRC HAS NOT PROVIDED FOR SOCIAL, PUBLIC HEALTH, AND PUBLIC SAFETY NEEDS OF THE RELOCATEES AND HAS NO PLANS TO DO SO

Probably the best-studied aspect of relocation and the land dispute has been its effect on the mental, physical, and social health of those who are being forced to move. These studies have found that rates of physical and mental illness, alcohol and drug use, poverty, domestic violence, divorce, crime, and interpersonal violence among the poplation subject to relocation are significantly higher than similar rates among control groups or the Navajo population as a whole.

Relocation has failed to consider these studies and take affirmative steps to alleviate the problems they report. It is no secret that these people need help. Yet the Tribe looks in vain for a sign that BIA/NHIRC will fulfill its obligation under the law to see that these services are provided. BIA/NHIRC has not even designated a site for a community services center in the "New Lands."

BIA/NHIRC believes that the Navajo Nation should serve the "New Lands" area without additional funding. For instance, Assistant Secretary Swimmer stated that he "expect(ed) the Tribe to agree to provide law enforcement to the New Lands with no additional funds..." 4 This was to be accomplished, apparently, by adding the 570 square miles of the "New Lands" to a 5,000-square-mile police district which is already difficult enough for its 21 officers to patrol.

In another instance, relocatees have requested a community center of their own. Such centers elsewhere on the reservation not only function as community meeting places and social centers, but also serve as head start schools, community health and first-aid stations, tribal service centers, child day care and senior centers, and as sites for police and fire stations. BIA/NHIRC now, on an advance permission basis, permits relocatees to meet in the NHIRC's site office. However, the meeting place is now already overcrowded. BIA/NHIRC now proposes to allocate a "modest" amount of money so that the relocatees can build their own service center. While we applaud the general concept of funding for community self-help projects, we feel that, even with the grant of up to $50,000 offered by the BIA, the relocatees would experience some difficulty building a meeting house, head start school, and three-bay fire station that would meet all the legal and functional requirements for such construction.

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4 (New Lands Task Force Meeting Notes, Nov. 7, 1986, p.8) In its own documents, NHIRC considered various options for

providing services to the "New Lands," but it ruled out as an option moving those who were in need of services before those services were available.5 Relocation was to concentrate on the young and the strong, until the services needed by the elderly, children, and the sick were in place. Yet here in 1988 we see the elderly and the chronically ill placed by agencies of the federal government in a situation where they cannot receive the care they need. Furthermore, there is nothing in BIA/NHIRC's plans or proposals showing a commitment to provide these services.

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5 (NHIRC, 1985, Planning for the New Lands: Policy Options and Synopsis of Comments, section 8)

WILL BETTER OVERSIGHT AND MORE FUNDING HELP REMEDY THESE PROBLEMS?

We do not feel that either BIA or NHIRC has the capacity to develop a comprehensive, rational plan for the "New Lands" or for the relocation program as a whole. Neither agency has qualified planners with the needed background and experience on its staff or employed as consultants. The Relocation Commission, which passes off its contract with CH2M Hill as evidence of its commitment to planning, has arranged for the removal of any qualified planner who raises issues essential to the delivery of adequate services to the relocatees. Furthermore, there is no person serving at the policy level in either agency who recognizes and effectively advocates the need for planning. The existing planning focus is on expediency without consideration of the long-term impacts on the lives of the families affected.

Indeed, Assistant Secretary Swimmer is on record pressuring the New Lands Task Force to speed up development. At one point he stated that they were behind schedule, and while he would prefer to take the time to see that actions were properly planned, he expected, once time lines were set, that they would be met.6 This rush to produce quick "results" is evident in the conduct of the entire relocation program under BIA/NHIRC. This rush continues on the Sanders/Chambers Trust Lands, as BIA/NHIRC attempts, at the expense of the relocatees, to create the illusion of a dynamic, successful program long enough to survive the present hearings.

Furthermore, BIA/NHIRC has never shown that it regards the Navajo relocatees as clients whose interests it is bound to advocate. Instead, BIA/NHIRC views the Navajo Nation as its adversary, and the relocatees as a problem to be solved rather than human beings for whose welfare it is responsible. How can an agency which has contracted for over 1,200 homes, many of which have proven defective, yet which has never once sued a contractor, be seen by anyone as an advocate for its clients?

No matter how diligent the oversight, no matter how much money congress throws at the relocation program, these institutional failings will continue to sour the relocation program and create recurring scandals, as long as BIA and NHIRC are in charge of it.

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6 (New Lands Task Force meeting notes, August 15, 1986, p.5)

WHY IS THE NAVAJO NATION CONCERNED? DOES THE TRIBE THINK IT CAN DO ANY BETTER?

Eventually the members of the New Lands Task Force, who have given themselves a free hand in disposing of tribal trust land, will finish their work, congratulate themselves, and move on. The Navajo Nation will have to pick up the pieces. The Tribe feels that the New Lands Task Force should not be allowed to pursue development on the "New Lands" until it has an adequate plan. Appended to this testimony is an outline of what the Navajo Nation thinks should be included in this plan. This is also the program that the Navajo Nation would advocate as a partner with the Commissioner in jointly planning and developing the "New Lands."

RELOCATEES' THOUGHTS ON RELOCATION POLICY

While BIA and NHIRC claim that relocation to the Chambers/Sanders Trust Lands is going well for the relocatees, the facts show a somewhat different picture. In their haste to relocate Navajo people, these agencies have done a sloppy and incomplete job of informing people of their benefits and options. They have supplied "counseling" that was actually a high-pressure and misleading sales pitch for relocation. In their dealings with Navajo people, they have followed expediency rather than humanity as a guiding principle.

The decision to relocate was a difficult one for most of the families, made more so by the fact that the terms of relocation were constantly changing. Different housing packages, benefits cancelled, changed, or taken away without notice, confusing grazing permit regulations, all had to be explained in Navajo to people who for the most part barely knew how to fill out a form. Many of them are still confused.

The first group of relocatees has organized an ad-hoc governing body to present their concerns to the tribe, BIA, and NHIRC. These concerns, presented below, require a response at the policy level. The first three policy issues concern matters relating directly to their welfare and survival.

1. Livestock permits are insufficient for many families. Many of the relocatees remember the General Plan for the New Lands, with its proposal for a 100-sheep-unit permit for each extended family. Now that they have relocated, they find that their grazing permits do not even provide them with subsitence. In one case, two households share a four-sheep-unit permit as their primary means of sustenenance. Other extended families are expected to feed themselves on eight, ten, fifteen, or twenty-five sheep units shared among several households. Relocatees have asked for an increase in permit size to 100 sheep units for each extended family, a level they say they were promised before they agreed to relocate.

2. The extended family is the basic economic and subsistence unit among Navajos. Most individual and family economic strategies simply will not work for a single household standing alone. In their resolution, the relocatees once more expressed their desire that their extended family members be allowed to move into their housing areas with them. For reasons which seem obscure to the relocatees, many of their extended family members have been denied

certification and are ineligible for homesites. In our opinion, these reasons are due to the inconsistent manner in which "residency" has been defined, and the fact that that definition does not fit within common notions of legal residency or domicile.

Relocatees face extended or permanent separation from family members who are essential parts of their "support system." They fear that uncooperative strangers will be moved into vacant homesites next door to them. The issue of who gets to move to the New Lands, and the goal of keeping extended families intact, has been given lip service by relocation. In the absence of affirmative policy, however, extended families are effectively being broken up because of operational necessities or inflexible regulations. This seems especially likely to happen in the "Rural Community" subdivision, where repeated requests by prospective relocatees to reserve blocks of adjacent homesites for extended family members have been refused.

3. The members of the relocatee community have requested that BIA and NHIRC make "steady, long-term employment" available. This is extremely important for the survival and well-being of relocatees, as they have been relocated into an economically depressed area without enough livestock for survival. Relocatees will also need cash income to make their utility payments and meet other expenses. Yet, compared with relocating them, creating jcbs for them has received a very low priority. BIA/NHIRC planning reflects this; no land is zoned or set aside for commercial, industrial, or economic development. Relocatee job creation has been limited to temporary employment on New Lands fencing crews and for housing contractors. BIA/NHIRC has only now begun its economic development surveys; it will be at least a year before these agencies will be in a position to even request funding for specific job training and placement, and economic development programs.

4. The members of the Chambers/Sanders relocatee community have asked that they be provided tribal and government services, specifically police protection, a head start school, counseling, tribal building inspection, and senior citizen programs. These needs and desires have been voiced repeatedly, and for years to NHIRC and BIA. The Tribe desires to serve the relocatee population and has in the past submitted detailed budget and facility requirements to NHIRC. Yet there has been no funding set aside to extend such services, and BIA/NHIRC land use plans do not provide sites for tribal or government facilities.

5. Relocatees feel that once they have moved they are no longer of interest to BIA/NHIRC. They have numerous concerns and complaints, yet find it hard to receive satisfaction. When they lived on the HPL, they were everybody's business, it seemed; now they are nobody's responsibility. They need a regular channel to work through to get things like:

   * Bigger watering troughs for livestock
   * Rain gutters for their houses
   * A dumpster
   * Minor changes in grazing arrangements
   * Locking gates
   * A water-hauling trailer
   * Permission to use a capped well for irrigation

   After their direct requests are ignored -- and they almost always are -- they pass a resolution at a community meeting, which is then sent to the Navajo Tribe and BIA/NHIRC in the hopes that a dialogue about their problems and needs can be begun and ended with some fulfillment of the promises made to them.

STATEMENTS OF INDIVIDUAL NAVAJO RELOCATEES

BIA/NHIRC has told Congress that relocation is proceeding well, and that the relocatees are happy in their new homes. What do the relocatees themselves say about life in the "New Lands?"

Keith Begay: I have been sick for the last week, just now getting better. Lots of people have been sick around here this winter, the way the wind blows through here, the cold and all. We need some community development out here, employment, a clinic, headstart school, and especially services for the elderlies who don't have their relatives here to help them out like they did on the HPL. But it seems like we meet, we pass resolutions, we petition BIA and Kathy Helmer, but nothing is ever done. <u>If I could move back, I would.</u>

Here, they even told me if my livestock was over the limit, I would have to move out. They counted my livestock before we loaded them, on the HPL, and it was all right, but they counted again when we got here and told me I had too many. Is this right?

Timothy Williams: BIA, Kathy Helmer and those others, they made us a lot of promises that they broke after we moved out here. Why couldn't they explain to us what they meant was going to be?

There was a big sickness here the last two weeks, everyone was sick, but we can't get treated for free in Sanders. Instead we have to go to Gallup. My little daughter got sick real bad, it was snowing real hard, a blizzard. There was no way to call for help, I couldn't find anyone with a car, so I had to walk out to call for help. The field nurse drove by, but she must have thought I was a drunk trying to flag her down, so she didn't stop. Finally we found someone with a car that could take us, but our daughter got so sick, they couldn't treat her at Sanders at all, she had to go to Gallup. We need help for emergencies, especially bad health.

We need employment to live here, the livestock is not enough even to eat. But there are just no jobs. We were supposed to be hired on the fencing crews, but the fencing company laid us off and hired their friends from Sanders. We have a big utility bill coming up and we don't know how we are going to pay for it.

The land here is good, but the atmosphere is not like it was back home. It is too lonely, we don't have our families to help us when we need to haul wood. We would like to have more livestock, but there just seems to be no way here. I took my family to Low Mountain for Christmas, and it was good.

Laverne Begishie: We have a lot of problems here, just like back at the old homestead. We never had to pay for utilities before, though. We don't have any money, we asked the Relocation Commission what to do, but they just neglected us. They never explained to us what the procedure was for utility payments, or if there was assistance available. The Tribe is helping us now (Low Income Home Energy Assistance Program).

Billy Williams Sr. My main problem is paying for the butane. The payment is real big, a lot of times we can't make it. So we have to build a fire and cook outside. Maybe that's why some of us got sick - I'm old and I can't stand the cold weather so much.

It seems like we can't get together and agree on things here, like we did back home. Even thought we live together, we don't work together for our community. There were less of these problems back in Teesto.

When we needed help, it seemed like no one wanted to listen. We had to go all the way to Window Rock to get emergency food assistance.

Joe Tsinnie: My wife has asked BIA lots of times to fill in the wash near our house, but they have never done it. She stumbled there when the snow was deep. Our water heater has gone out twice, it was replaced once and went bad again. Now we have to heat water on the stove.

We worry about money. Sanders Clinic told us we had to go to Gallup because we didn't have the money they wanted. We worry about the bills, about losing our gas and electricity. We need jobs now, but there are not even any.

Andrew Yazzie: There was suppose to be employment here for us, but it's not like that. At the start we were working, but then they laid us off and hired local people. How can we even look for work without a telephone? BIA said we would have to provide one ourselves.....IHS nurses came out when we first moved here, but now they don't come anymore.

Silago Begay: We have the same problems here as it was on the JUA. We need hay and feed for our livestock, we need water for them. We need the LIHEAP to help us with our utilities. We went so far down in making a living.

Betty Ram Herder is a 57 year old woman who was born in Dinnebito, an area east of the Coalmine Chapter located in the Hopi Partitioned Lands. Betty and her husband, Ram Herder, have accepted relocation to the Chambers Sanders Lands and are now living in the government provided home in the Parker Draw range unit. They are a very traditional family and are known for their practices of traditional medicine. It was an emotional and mental ordeal for Betty to accept relocation to these so-called new lands, and it took much courage to finally accept the idea of moving.

"I have had many health problems during this past summer prior to our move. I almost didn't make it relocating here. I kept having fainting spells and I kept thinking maybe I wouldn't wake from one of these spells one of these times. I am very limited in doing physical work. I have a daughter living in St. Johns who comes out on weekends to help clean house, cook, and other chores.

When the livestock were transported, one of the sheep died that night. I assume they were too crowded during the haul that cause the death. I told BIA I want compensation for losing one sheep. At Chambers Ranch, we had eight cattle that we first put in the range. Today there are only 4 cattle. Don't know what happened to them. We're told that either calves were lost, or no breeding took place. Here at our resettlement lands we are allocated 45 sheep units year long and I am glad about his.

The family has concerns about housing construction, poor workmanship, doors not fitting right and some of the doors do not close right.

On HPL, one traditional hogan remain standing, one octogan hogan, and one sheep corral are still intact. Family had relocated here 3 weeks ago, on November 17, 1987. Betty said they still had to make additional trips to haul other belongings.

Betty continued, "I try to be positive about our move here and I try to appreciate our new home and the new livestock grazing lands. Over in HPL, our former home was dilapidited, worn and torn. The men folk had to travel great distance to acquire fuel wood. Here it seems like wood is available here at the doorsteps. But, I don't know, maybe in time I will begin to feel the loneliness, maybe by summer time I will begin to feel lonely and wanting to go back. I have been to Gallup Hospital to get acquanted with the facility there.

My children are happy and satisfied with the new home and area. I am encouraged by having the nearby homes and families as neighbors. Back in HPL, the nearest neighbor was two miles away, In addition, my children come around here regurally, and this helps me to maintain my emotional stability.

I question how many families can move on to a range unit? I have a granddaughter who never applied. Perhaps she's too young to apply for relocation benefits, but she has already staked a land claim. I am concerned for the need to have extended families remain intacted and united. Relocation has divided and broken up families, physically, politically, etc. This should be addressed and corrected. I am is concerned for my brother, Charley Brown, who is denied, and I want to remain united with him because he is the only brother I have. There's no other sister or other family member alive today. He is the only one left, and I want to remain in contact with him, however NHIRC is denying him eligibility. My brother was born in Dennibito and I don't understand why he was denied. lso my husband's 97 year old mother was left behind in the HPL. She is staying with Ram's youngest brother. They applied for benefits and want to relocate to the Tuba City area, but cannot do so immediately because of the Bennett Freeze.

Farming was a very important aspect of our family's livelihood and survival. Corn is a main source of food. Farming area was very good, soil very fertile in the HPL. corn ear won a prize at the Navajo Nation Fair as 1st prize. Corn is used in many various ways. Just last night, we used grinded corn to conduct traditional ceremonies to ask for blessings for our new homes and lands. We hope we will like it here-somehow."

HPL Residents Testimonies

The following are short statements made by families who continue to reside in the HPL as of the date indicated in each family statement.

Estoney Begay is an 88 years old man, born in 1899 in the same vicinity that he is currently residing in. He remembers the teachings that were passed on to him by his grandfathers decades ago, and that he values those words told to him which he remembers very clearly.

"I could consider moving across the fence to the Navajo side, and I did try requesting for a homesite lease two times, however each time it was disapproved. There are no homesites available where I want to move too. My children relocated mainly due to construction freeze in the HPL, they say they want to return to their land (FJUA-HPL) someday when the land is returned to the Navajos. My wife Clara and I value our land, because of the good farming and grazing lands and we want to honor what our elders thaught us. I remember what my grandfathers said, many of whom died of the "great sickness" an epidemic years ago. Some of those died three at a time in one day. They loaded up in wagons and buried not to far from here. The wagon remains can still be seen at where the bodies were put away. There were no Hopis around here in those days. All the burial sites in the area are Navajo, so I don't understand it when the Hopis claim ownership to these lands. So I remember my grandfathers and that's why I remain here to this day."

"Some of those Hopis that come around to these areas are pretty mean. But there is one Hopi man that seems to very understanding of our troublesome times and days and he treats us well. We appreciate him, but I don't know what they'll (Hopi Tribal Government) do to him if they find out his sympathy for us. Hopis have also diverted much of the local water supply, diministering our domestic and livestock use. They (Hopis) came around all the time, and at times it seems like they don't mind us when we're working to rebuild our dilepidated hogan."

Alfred McCabe, Sr is 61 years old and was born near Oraibi, Arizona. He is certified to receive relocation benefits, but feel that they cannot relocate over to the Navajo side and expect to live like the way they use to.

"Chambers - Sanders lands are not adequate in size and general land are for my family and our livestock. I feel that the Chambers Lands cannot support too many livestock. I say that because being born and raised here, I have seen these lands support 220 cattles, 40 horses, and 300 sheep run by my family. I cannot see Chambers Lands having this capability. We are a

very large family and we cannot all be accommodated on the Chambers Lands. Therefore, I have no choice but to remain here. I am too use to these lands and deplore the idea of living anywhere else. Sheep is the only source of food and diet, our family is naturally use to it. Beef and other modern food are not too fulfilling. We get mutton-hungry in no time. My children are the same way. We want our own separate lands exchanged to us due to the large extended family. If Sand Springs got some lands back, and if I did move there, I know I will run into resentment my move will include livestock. I fear grazing disputes. Traditional Ceremonies and beliefs are also very important aspects of our lifestyle and way of life. These lands very much relate to our religious practices, and it cannot be transferred."

Jack T. Begay and Helen Begay are certified and confused about accepting relocation to the new lands, three of their children relocated, one is certified and awaiting relocation, and one whose status is unknown.

"I have a house in HPL, and another one in the NPL, because that I anticipate and fear grazing dispute if I relocate over the fence to the Navajo side, my wife and I are considering moving to the Chambers Lands, but we see problems over there also. The New Lands are bare in terms of economic and community development. We're afraid that if we move there, we will be total strangers. Here we have a small employment with the Chapter that BIA says will replace with a similar employment on the Chambers Lands, but I don't know. I have a question: If we move to the New Lands, and if we couldn't adjust, could they move back to Tolani Lake? Response by BIA was yes, if they could resell their relocation home on the NPL home, there are some families that relocated not too far from where we live who seem to have a poor attitude, conduct and disrespect. I have been sick a great deal recently, and this also cloudys up my confidence to do well on the New Lands. One of my daughters said she would maintain residency in the HPL, even if we relocate to the New Lands. The grazing permit will be transferred to her and she will then hold down our home here, allowing us to maintain contact with this home."

COMMENTS OF THE VARIOUS AGENCIES OF THE NAVAJO GOVERNMENT

THE NAVAJO OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT

The Office of Business and Economic Development has identified two areas where economic development is necessary to mitigate the effects of relocation and the land dispute. The first of these is in the Former Joint Use Area, which suffers from deteriorating housing stock, lack of basic infrastructure, and a low level of economic activity. This region's economic base was virtually destroyed by congressionally-mandated livestock reduction, while relocation into Navajo Partitioned Lands communities increased the pressure there on already-overloaded local economies. The federal government is responsible for these conditions and should assist with the financial burden of correcting them.

The Sanders/Chambers area, where perhaps 2,000 persons will relocate, should be the other immediate focus for economic development efforts. The Sanders/Chambers area is economically stagnant and has few jobs, and is an hour away from the nearest employment centers. The Office of Business and Economic Development estimates that it will be necessary to create full-time employment for 300 to 700 persons, but notes that so far, the relocation program has refused to take the steps necessary to do so.

The Office estimates that an investment of at least $28 million for infrastructure and facilities will be necessary to provide 700 new jobs, and that another $6 million is necessary for a modestly-sized shopping center to meet regional needs for commercial and office space.

The Tribe is asking that this year's appropriations include an amount sufficient to fund comprehensive economic development planning in the Sanders/Chambers Trust Lands and in the Former Joint Use Area, and for master planning of development sites. The Tribe feels that neither NHIRC nor BIA has the capability or inclination to respond affirmatively to the needs and desires of Navajo people. Accordingly, we desire an equal partnership with the new Commissioner to conduct this economic development planning, in order to see that it is done right.

THE NAVAJO DIVISION OF HEALTH

Relocation and the land dispute have placed extraordinary burdens on the reservation's social and public health services. Because its workers must constantly deal with the problems caused by relocation and the land dispute, the Navajo Division of Health is especially concerned with the social, psychological, and physical health problems of those affected by relocation and the land dispute. These include: chronic mental and physical illness among the population subject to relocation; dissolution of communities and extended families; elevated death rates -- possibly as much as 50% higher -- among the elderly; economic loss due to livestock reduction and the disruption of community mutual-help networks; an increased level of social pathologies, including truancy, crime, alcohol and drug abuse, and divorce; distrust of all government officials, including those of the Navajo Nation; and a general loss of the ability to cope with their problems.

These social and personal problems are also found among those who have relocated on or off the reservation, and among those who are moving to the "New Lands." BIA/NHIRC has done little to guarantee that these people receive the services necessary to mitigate the adverse effects of relocation. Services to relocation communities are poorly planned and underfunded. On the "New Lands" BIA/NHIRC has yet, after four years of "planning," to even designate a permanent site for human service delivery.

Another group in great need of services are the refugees -- those who relocated voluntarily and either have been denied benefits or have yet to receive them. NHIRC did not even bother to find out where these people were until it was forced to do so by Congress; that agency certainly has no plan to provide them with services. To whom can these people turn?

The Navajo Division of Health recommends the following:

(1) That the government fund in-depth studies that will quantify the effects of relocation; present attempts to mitigate these effects are poorly directed because of a lack of good information.

(2) That federal funds be made available to provide the social, community, and health services deemed necessary by in-depth studies, and that such funding continue until the adverse effects of relocation are mitigated.

(3) That the Navajo Nation should be the principal provider of necessary human services to the population affected by relocation

THE NAVAJO DIVISION OF EDUCATION

The Navajo Division of Education takes a particularly dim view of BIA/NHIRC's approach to providing education and other services to the Sanders/Chambers Trust Lands. When BIA social workers speak of "some vacancies" at Zuni Public School District, "some vacancies" at Pine Springs Boarding School, "some vacancies" at Sanders, they reflect once more BIA/NHIRC's piecemeal, unplanned approach to the entire relocation process. Relocatees are people who come from a community and who need to become part of a community again. It is not enough to serve them as individuals; they will need their own institutions, including schools, around which to form a new community.

The Division recommends specific actions, including:

An accurate analysis of the numbers and composition of the families who are likely to move from the former Joint Use Area to the "New Lands." This analysis should take Navajo residence patterns into account, including the practice of having children live with grandparents or other relatives while attending school.

Relocation funds to be programmed for planning and constructing new schools. The usual source of such monies, the Federal Impact Aid Law, (P.L. 81-815), presently has about a ten-year backlog of projects. New schools funded under P.L. 81-815 might be ready by the time today's preschoolers were high school seniors.

An honest, impartial assessment of the extent to which school district wells are contaminated by radioactivity. The school district draws its water from the Rio Puerco alluvial aquifer; studies to date by USGS have shown unsafe levels of radiation in groundwater from this source. While BIA/NHIRC maintains there is no danger, their own internal documents reveal they have been cautioned otherwise.7

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7 (New Lands Task Force Notes, Nov. 7, 1986, p. 7,)

THE NAVAJO DIVISION OF WATER RESOURCES

The Division of Water Resources has for years been concerned about the safety and adequacy of water supplies to the Sanders/ Chambers Trust Lands. The Division is still not satisfied that its concerns have been adequately addressed. Although BIA/NHIRC assures us that there is adequate water and no danger from contamination, the facts suggest this is not the case.

NHIRC assured us that there was a superabundance of water in the "New Lands," including a 1,000 gallon per minute (GPM) well on the Spurlock Ranch. The supply well, when actually drilled, was tested at 100 GPM - enough by IHS guidelines for about 250 homes (IHS bases its calculations on a figure of 250-300 gallons of water per day per household, much lower than the per-household allowance used when designing water supply systems for non-Indians). IHS currently plans to tie its so-called temporary wells into the permanent water supply system. These wells are drilled into the Bidahochi Formation, an aquifer having limited capacity and recharge; heavy pumping of the Bidahochi may rapidly result in reduced well yields and increased levels of impurities such as arsenic, flouride, and lead already found in some wells.

BIA/NHIRC downplays the danger from radionuclide contamination of the Rio Puerco and its alluvial aquifer. Alluvial water is not being used as a source for domestic consumption on the "New Lands" -- but it is the water supply source for the Sanders School, where BIA/NHIRC proposes to send relocatee children. The fact is that preliminary studies by USGS show borderline or unsafe levels of contamination in well water taken from wells drilled into the Rio Puerco alluvium. USGS is on record as saying that these levels could increase as contaminated water moves through the alluvium. Studies to locate, assess the extent of, and find ways to mitigate radionuclide contamination are proposed now for the Rio Puerco and the Little Colorado Rivers. Until these are complete, any statements about the safety of this water supply are conjecture.

Chairman Atkinson of NHIRC testified before this committee that there is no danger of radionuclide contamination of the groundwater sources used to supply the IHS permanent water system. IHS, which relies on USGS evaluations of water resources, has never received from that agency any statement or report ruling out such contamination. USGS cautions that the Sonsela Aquifer, into which the Big Flowing Well is drilled, is part of the uranium-rich Chinle Formation, and may contain water-soluble radioactive elements which could be mobilized by increased pumping. USGS has also never given IHS or BIA/NHIRC assurance, verbal or written, that there is no possibility of

contaminated water passing from the Rio Puerco Alluvium into the Sonsela Aquifer. What USGS did say in its 1987 project proposal for a comprehensive study of radionuclide contamination in the Rio Puerco and Little Colorado River Basins, was that:

> "The magnitude and extent of radionuclide and other trace element contamination in the Little Colorado River basin is unknown." and
> "More importantly, no reliable means for assessing future changes in potable water supplies is available. Information is needed on the occurrence and movement of contaminants in surface and ground water to enable reliable estimates of potential contamination and to provide a basis for comprehensive water-resource planning and development in these basins."[8]

BIA/NHIRC has no contingency plans in case water supplies become contaminated or inadequate, or in case well yields decline. BIA/NHIRC has no plan for supplying industrial process water for economic development. BIA/NHIRC cannot guarantee enough water to irrigate even household gardens and cornfields. BIA/NHIRC can not assure that water supplies will be adequate at the time development of the "New Lands" is complete.

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[8] (U.S.G.S. Water Resources Division, Arizona District, Project Proposal: Occurrence and Movement of Radionuclides and Other Trace Elements in the Puerco and Lower Little Colorado River Basins, Arizona and New Mexico, Tucson, AZ, Oct., 1987. pp. 1,3)

APPENDIX A

THE NAVAJO NATION'S PROPOSED COMPREHENSIVE DEVELOPMENT PLAN FOR THE SANDERS/CHAMBERS TRUST LANDS

The Tribe is asking that the comprehensive plan contain the following elements:

I. POLICY

Relocation has operated for years in a policy vacuum. Policy is often made by a process of non-decision; in other cases abrupt policy shifts leave relocatees wondering what happened. They are particularly confused about the terms of the New Lands Grazing Regulations and the permitting and management procedures they contain. Avowed policies have often been ignored for operational convenience. The plan will contain clear, unequivocal statements of present relocation policies, the reasoning behind them, and the actions taken to implement them. Policy matters discussed will include, but not be limited to:

1. Who gets to move to the New Lands; what steps are being taken to keep extended families and communities together; what meaures are being taken to provide the necessary sustenence for extended families?
2. Livestock permits; who gets them, and how many sheep units do they need?
3. What is BIA/NHIRC policy on economic development and providing employment to relocatees?
4. What is the BIA/NHIRC policy on providing social services?

In full consultation with the Navajo Tribe and with Navajo relocatees, these policies will be reviewed and evaluated, and necessary changes made. All major plan provisions will have a basis in explicit policy, and this basis will be explained clearly and concisely as a preamble to each major plan section.

II. SUMMARY OF WORK TO DATE

This section will briefly and clearly describe and map planning work done to date. It will include clear discussions of the rationale behind planning and development decisions which have been made. It will include these elements:

1. Plan areas, including range units, residential areas, and other withdrawals.

2. Utility systems, including water and sewer systems, and electric and communication lines.
3. Roads, including rights-of-way and specifications.
4. Other major, irrevocable commitments of land or resources.

III. RESOURCE INVENTORIES AND DATA BASE

This will be the data base for the comprehensive development plan. It will summarize existing information, and where appropriate map it at a uniform scale for use in planning. Most of this information is available, but needs to be pulled together. The inventory will include at the minimum:

1. Natural resources inventory; soil survey, topography, vegetation and range site, climate and solar exposure, water resources, and flood hazard areas. Where existing resource inventories are inadequate, the plan will commission new studies.
2. Results of USGS, EPA, and other studies of radionuclide contamination of the Rio Puerco and nearby aquifers.
3. Cultural resource inventories mapping all archaeological and historic sites in proposed development areas.
4. Human resource information including complete census of relocatee population, demographic projections, human service needs assessments, and information on relocatee employment capabilities and preferences.
5. Economic development opportunities and potential for the New Lands area, including the I-40 corridor between Holbrook and Gallup.

This information will not be merely presented, but will be analyzed and used in the plans that follow. There are several plans that must be completed simultaneously. These are listed below.

IV. LAND USE PLAN

This plan will provide for the following uses, and will contain the following management directives:

1. Range Units and Rural Housing

Range units will be redrawn as necessary to allow increasing the livestock allotments of relocatees to the levels permitted in revised New Lands grazing regulations. This plan element will show each range unit as an integrated whole and will map designated homesite areas, fencelines, range improvements, and range sites. It will contain the information necessary for relocatees to produce range

management and land use plans (including dispersed housing, gardens and cornfields, ceremonial areas, and other uses) for their units. Funding will be programmed to implement these plans.

2. Rural Community

The rural community will follow the concept being presently developed, but will include land allocations for the full range of land uses found in a normal community, and will provide the sites necessary to meet human service and economic development needs. The rural community will be planned in a way that will accomodate as many of the 1,200 or more refugee families as may wish to live there, and will have room for growth and expansion. Rural community planning will be integrated with economic development planning. Community and economic development will be conducted in phase, so that relocatees will have employment. The rural community will be included in the proposed Economic Development Zone. Homesite leases in the rural community will be granted in such a way that extended families will be able to settle groups of adjacent lots.

3. Roads, Streets, and Utilities

This section will establish rights-of-way and design specifications for roads, streets, and utilities in and to all development areas in the New Lands. Development areas will be provided adequate communication services.

4. Economic Development Zone

All trust land within one mile of I-40, and within a half mile of old U.S. 66 will be reserved for use as commercial, industrial, tribal service, and high-density housing sites. Other prime locations, such as near the junction of U.S. 666 and the Zuni Highway, will be similarly reserved. These areas will, together with surrounding trust and private land, be the primary locus of economic development efforts. They will be served with appropriate roads, streets, utilities, public services, and communications facilities. The plan will include provisions for financing economic development and job training and placement. This plan will be integrated with tribal development plans for the I-40 corridor, and with the economic development plans for the cities of Gallup and Holbrook.

5. Natural Resources

All mineral, woodland, and wildlife resources will be inventoried and management plans for them produced. Plans will be in compliance and accord with Navajo Tribal resource management plans and procedures.

V. HUMAN SERVICE DELIVERY PLAN

Based on the needs assessment, the plan will specify service delivery programs for relocatees and the host community. This plan will include facility siting criteria and needs, and will program funding requirements. It will also include a program for recruiting and training needed human service personnel.

VI. ECONOMIC DEVELOPMENT PLAN

Based on human resources and other economic studies, this plan will make specific, concrete proposals for economic development. This will include feasibility studies, training and placement programs, and information necessary for the provision of sites and services in the economic development zones. The plan will establish governmental or corporate frameworks for financing economic development and collecting revenue.

VII. IMPLEMENTATION

The plan will describe how, and by what agencies, these plans are to be implemented. It will provide for an orderly transition of responsibility from the New Lands Task Force to the appropriate Federal and Navajo Tribal agencies. The Navajo Tribe and its agencies will be consulted at all stages of planning, and will provide review and comment in a timely manner. The plan will be produced with the maximum feasible input and consultation from Navajo relocatees and potential relocatees; their suggestions will be followed wherever possible. The plan produced will be in accord with tribal law and management policies. Implementation will include a provision for timely consideration and expeditious remedy of requests and complaints from relocatees.

BIA/NHIRC will provide congress with detailed, line-item appropriations requests to implement the previous plan elements. Funding will be programmed through plan development and implementation phases. In this way, Congress and the American people will know exactly what their tax money is paying for; discretionary and administrative spending will be kept to a minimum.

APPENDIX B

RESOLUTION OF THE AD HOC COMMITTEE OF
THE CHAMBERS/SANDERS TRUST LANDS COMMUNITY

Requesting Assistance from the BIA and the Relocation Commission

WHEREAS:

1. The Chambers/Sanders Trust Lands relocatees formed an AD HOC Committee to provide self-advocacy, input, recommendation, suggestion and direction in the overall development & resettlement of their community.

2. The members of the Chambers/Sanders Trust Lands Community have relocated to said lands; and

3. Community members do not want their needs to be forgotten now that they have relocated; and

4. The Community members wish to participate in the planning of their relocation as required by Public Law 93-531.

NOW BE IT RESOLVED THAT:

1. Community members requests increased participation in the planning of their relocation as required by P.L. 93-531.

2. The Community requests that both the BIA and the Relocation Commission construct or make available the following facilities.

   a. Chapter building.
   b. Water tanks for community cornfields and gardens.
   c. New and durable metal fencing.
   d. Sturdy water troughs which will accomodate more animals since the existing troughs requires frequent refilling because it is too small.
   e Locking gates to pasture and grazing areas.
   f. Individual permittee Corrals for sheep and goats.
   g. Fire extinguishers, hydrants and fire house.

3. The Community requests the Southern portion of the Little Silversmith range unit boundary to be adjusted to form rectangle, filling in the jagged edge boundary that now exists.

4. The Community recommends that they be permitted to graze sheep and goats close to the residental areas, rather than to graze in distant range pastures.

5. The Community requests all houses which have not yet been inspected, to be inspected. Inspectors must check for defective wiring, defective installation of roofing materials, defective roofing materials and other relevant inspections.

6. The Community requests better site preparation to prevent erosion around the houses, rain gutters installed on the houses to prevent erosion to the foundation of the houses.

7. Members of the Community feel deceived by earlier plans which indicated they would have an opportunity to increase their livestock holding up to 100 sheep units. The Relocatees relied upon these plans. It was a major factor in reaching their decision to relocate. The relocatees requests an increase of the current 80 SUYL to 100 SUYL, as was initially considered.

8. Community members request BIA and Relocation Commission make available steady long term employment.

9. The $500.00 moving expense allowance is inadequate. Some Community members have had to pawn in order to pay moving expenses, and even still there is not enough funds to complete their relocation. The members recommend the moving expenses be increased by another $500 and the members do not want their bonus money to be used to pay their moving expenses.

10. Community members recommend that their appraisal benefits still be provided to them as was conducted prior, and improvements on the HPL reappraised because they believe that these were underappraised.

11. Community members recommend that their children and immediate relatives, whom are unjustly being denied to receive relocation benefits, be promptly certified eligible for relocation benefits.

12. The Community requests that a community health facility be constructed to handle medical and health care, and equipped to handle emergencies.

13. The Community requests that a head start facility be constructed at the relocation site.

14. The Community does not want to be forgotten, it wants counseling and senior citizen programs. The elders request that a congregated meals program be established.

15. The Community requests that a community education program be established for the host community so that there is an awareness and understanding of the plight of the relocatees.

16. The Community wants a regular police patrol available because of threats made to them by local derelicts, at who come on to the range unit and create a nuisance.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Chambers/Sanders Lands AD HOC Committee at a duly called meeting at which a quorum was present and that same was passed by vote of 21 in favor and none opposed, this 2nd day of August, 1987.

K. C. Begay
Presiding Chairman

APPENDIX C

THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

May 26, 1987

Mr. Ross O. Swimmer
Assistant Secretary -- Indian Affairs
U.S. Department of the Interior
18th & C Streets, N.W.
Room 4600
Washington, D.C.

RE: Permits and Rights-of-Way, Chambers/Sanders Trust Lands.

Dear Mr. Swimmer:

I have been informed of discussions over the past few weeks between BIA and Navajo Nation staff regarding a powerline right-of-way over the Chambers/Sanders Lands. I would like to clarify the Navajo Nation's position on the approval of all permits with regard to those lands.

I am sure that you appreciate that, to us, this is not a simple housing development project. It is a massive undertaking which will have a significant impact on the lives of hundreds of Navajo families with which they, and the Navajo Nation, will have to contend for many years to come.

The Navajo Nation has a moral and legal obligation to preserve the health, safety and well-being of its members. The Nation cannot take affirmative steps affecting the lives of its people until it is satisfied that their basic interests will be protected. As you know the Navajo-Hopi Land Commission and the tribal staff have significant questions about the health and safety of families who will be relocated to the Chambers/Sanders Lands. The Nation also has questioned the lack of advance planning by the BIA regarding settlement of those lands.

I understand from the tribal staff that some steps have been taken to answer the Land Commission's questions. I am also informed that an agreement regarding consultation and additional planning for the Chambers/Sanders Lands is being discussed by

your staff and my own and that preliminary indications are that such an agreement may be reached. I appreciate these signs of cooperation from your staff.

I want to make clear that I intend to approve permits relating to this development, assuming they meet with all necessary tribal approvals. In the future, I believe that the approval process could be accelerated significantly if the BIA would work more closely with my staff in order to address those concerns which are particularly important to the Navajo Nation because of its obligation to protect the well-being of its citizens. Only through that type of mutual respect and cooperation can we avoid the jurisdictional disputes that have led to costly and time consuming litigation between the Nation and the BIA in the past.

I have instructed Carol Retasket to forward to you, by June 1, 1987, a consultation agreement for your review and signature. I hope that the signing of the Agreement will mark a new level of cooperation between us.

Sincerely,

Peter MacDonald, Sr.
Chairman
Navajo Tribal Chairman

PM/pfj
cc Carol Retasket

THE NAVAJO NATION
PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

June 9, 1987

Mr. Ross O. Swimmer
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
18th and C Streets, N.W., Room 4600
Washington, D.C. 20240

Dear Mr. Swimmer:

As I mentioned in my May 26, 1987 letter to you, the staff of the Navajo Nation has been developing a proposed consultation agreement between the Nation and the Bureau of Indian Affairs (BIA) regarding your development efforts on the Chambers/Sanders Trust Lands. Preliminary discussions with local BIA staff indicated that such an agreement could be reached. Enclosed is the proposed agreement prepared by Ms. Carol Retasket and her staff, based in substantial part on her conversations with your local staff.

I believe that this agreement could address some of the communications difficulties that the Nation and the BIA have experienced in the past on this project, and I am prepared to obtain necessary approvals from Tribal Council Committees for the agreement in its present form. If the agreement meets with your approval, please let me know and I will begin that process immediately. If you would like to discuss specific aspects of the agreement, I suggest that you contact Ms. Retasket directly at (602) 871-6441.

I hope that our signatures on this agreement will signal a new spirit of cooperation between the BIA and the Nation regarding the BIA's development of the Chambers/Sanders Lands. More importantly, I hope this agreement will assist in achieving a comprehensive resolution of the enormous problems for the Navajo people arising out of relocation and other aspects of the Navajo-Hopi Settlement Act of 1974. I look forward to working with you on these critical issues.

Sincerely,

Peter MacDonald,
Chairman
Navajo Tribal Council

INTERGOVERNMENTAL CONSULTATION AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 1987, by and between the Chairman of the Navajo Tribal Council ("Chairman"), on behalf of the Navajo Nation, and the Assistant Secretary for Indian Affairs ("Assistant Secretary"), on behalf of the United States of America, Department of the Interior, collectively referred to as the "Parties".

WHEREAS:

1. The Assistant Secretary has undertaken a housing construction and development project ("Project") on the Chambers/Sanders Trust Lands (also known as the "New Lands") intended to serve Navajo citizens subject to relocation under the Navajo-Hopi Settlement Act of 1974, 25 U.S.C. § 640d et seq., who may elect to relocate to the Project ("Relocatees") ; and

2. The Assistant Secretary has statutory and trust obligations to carry out the Project for the benefit of the Relocatees. Those obligations include minimizing the adverse social, economic, cultural and other aspects of relocation and assuring that housing and related community facilities and services, such as water, sewers, roads, schools and health facilities for such households are available at the relocation sites; and

3. The Parties agree that the Project is located on lands within the boundaries of the Navajo reservation and within the territorial jurisdiction of the Navajo Nation. By virtue of its governmental jurisdiction over the lands and those persons who may reside thereon, the Nation has an obligation (independent of the Assistant Secretary's statutory obligations) to protect the health, safety and welfare of its members; and

4. The Parties agree that the Project should be carried forward in a spirit of cooperation, coordination, communication and good will in order to

minimize the adverse social, economic, cultural and other impacts of the Project on the Relocatees; and

5. The Parties recognize that the Project involves only a small portion of the tens of thousands of Navajo people (including present and former residents of the Hopi Partitioned Lands, the 1934 Reservation, and relocation host communities) who are or may be affected by the Navajo-Hopi Settlement Act and related litigation. The Navajo Nation, in carrying out its obligation to protect the interests of all its people, will continue to seek a comprehensive legislative resolution that addresses the needs of all affected Navajos and minimizes or eliminates the social, economic and mental auguish associated with relocation.

NOW THEREFORE, the Parties agree as follows:

1. The Parties shall establish a Consultation Committee (the Committee) which shall be responsible for all communication between the Parties regarding the Assistant Secretary's continued planning for development and settlement of the Chambers/Sanders Lands.

   a. The Chairman shall select, as members of the Committee, up to seven (7) representatives of the Navajo Nation familiar with the relocation effort and with the needs of Navajo relocatees.

   b. The Assistant Secretary shall select as members of the Committee, up to seven (7) Bureau of Indian Affairs ("BIA") employees responsible for various aspects of the Chambers/Sanders Lands Project.

2. The Consultation Committee shall proceed as follows:

   a. The Committee shall meet within 14 days of execution of this Agreement to receive reports from the BIA employees

living on the HPL and/or awaiting relocation. The data compiled by the Parties indicate significant discrepancies in survey results. Such discrepancies distort the position of the Parties and make an overall solution more difficult to achieve. The Committee shall compare survey data and strive to eliminate any discrepancies, so that the Parties can work from a uniform database.

5. The Committee shall submit joint quarterly progress reports to the Chairman and the Assistant Secretary.

6. The Parties, through the Committee, shall work together to maximize Navajo employment and contracting opportunities in construction and other activities on the Chambers/Sanders Lands and to ensure that all tribal laws, regulations and codes are strictly adhered to.

7. Because relocation is a federally mandated undertaking, the Assistant Secretary agrees to use federal funds already appropriated, or seek supplemental appropriations if necessary, to carry out construction, counselling and all other activities connected with relocation. To the extent that the Navajo Nation is requested to undertake responsibilities on the Chambers/Sanders Lands under existing or future P.L. 93-638 contracts or other agreements, the Assistant Sectretary shall seek additional funding for those contracts from Congress. The Nation shall not be required to assume such responsibilities unless additional funding is obtained. Such funding shall not come out of other program monies already earmarked for the Navajo Nation.

8. The Parties expressly reserve all of their legal rights. Nothing in this Agreement shall be deemed a waiver of the right of either party to take whatever actions are necessary under the laws of the United States or the Navajo Nation, by legislation or otherwise, to protect their respective rights and obligations.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS

Dated: _____

By: _____
Ross O. Swimmer
Assistant Secretary-Indian
Affairs

THE NAVAJO NATION

Dated: _____

By: _____
Peter MacDonald, Sr.
Chairman
Navajo Tribal Council

RESOLUTION OF THE
NEW LANDS
AD-HOC COMMITTEE

Supporting the Memorandum Of Agreement Prepared By The Navajo Tribe and Other Requests

WHEREAS:

1. Relocation is mandated by P.L. 93-531 and 96-308 has caused much hardship and has far-reaching impact on our lives and the lives of our descendents; and

2. We are interested in moving to the Chambers-Sanders Trust Lands; and

3. We have requested the assistance of the BIA and the Navajo Tribe in making sure that our relocation is properly carried out; and

4. We understand a draft Memorandum of Agreement has been prepared by the Navajo Tribe and submitted to Assistant Secretary Ross Swimmer on June 9, 1987; and

5. We have group and individual concerns about our move to the Chambers-Sanders Trust Lands (also known as the (New Lands); and

NOW THEREFORE BE IT RESOLVED THAT:

1. We wish to express as a group our wholehearted support for the Memorandum of Agreement, submitted to the BIA by the Navajo Tribe on June 9, 1987.

2. We request Assistant Secretary Swimmer sign the Memorandum of Agreement.

3. We request the BIA and Navajo Tribe to prepare a needs assessment of our current needs and develop plans to meet those needs.

4. We will as a group or as individual families make requests of the BIA and/or the Navajo Tribe to provide certain kinds of assistance as a prerequisite to our relocating to the New Lands.

CERTIFICATION

We, hereby certify that the foregoing resolution was duly considered by the New Lands Ad-Hoc Committee at a duly called meeting at the New Lands (Sanders-Chambers Trust Land), Navajo Nation, Arizona, at which a quorum was present and that same was passed by a vote of 9 in favor and 0 opposed, this 23 day of June, 1987.

Tom Denny
Chairman
New Lands Ad-Hoc Committee

APPENDIX D

TESTIMONY PRESENTED BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
PERTAINING TO THE NAVAJO-HOPI RELOCATION PROGRAM

by

The Navajo Division of Health
P.O. Box 1390
Window Rock, Arizona 86515

December 9, 1987

Dear Senator Inouye:

We are mental health staff who are working for the Navajo people in the Hopi Partitioned Lands. As Navajos, we also have close relatives and families who live in these lands, and who are being affected by the federal Program which mandates forced relocation, stock reduction and fencing of Navajos from lands which all of us have considered home. Our testimony, however, is intended to be from a professional starpoint, and we hope that you will consider what we have to say in that light.

The effects of the forced relocation mandated by Congress and implemented by the BIA and NHIRC are well known. The purpose of the following testimony submitted by Behavioral Health Department of the Navajo Tribal Division of Health is to concentrate on the plight of the approximately 2500 families still awaiting relocation in the Hopi Partitioned Lands. These families must daily confront (1) harassment by Hopi and Federal police who are enforcing construction and other freezes, (2) the immediate anxiety brought about by the prospect of forced relocation, and (3) the long term effects of forced relocation, stock reduction and denial of access to traditional lands.

In the following testimony we will concentrate on the immediate effects of threatened relocation and the long-term effects. We will then describe what we recommend based on the implications of what we describe and of our direct professional experience in the area.

Immediate Effects

The immediate effects of threatened relocation, stock reduction and denial of access to traditional lands have gotten worse, not better, since the initiation of the forced relocation in 1974. These effects can be described

as they impinge on the elderly in particular and the extended families, more generally.

The elderly continue to suffer from the anxieties of both actual and threatened relocation, stock reduction and loss of land. Elderly individuals we see still report severe depression, loss of appetite, greater susceptibility to disease, sleeplessness, and a general loss of health. We enclose a list of individuals who have died in the community of Teesto, since 1977, and it is our suspicion that the death rate among the elderly is possibly 50% higher than that in the neighboring communities of Dilcon, located completely out of the HPL.

The breakup of extended family households has been noted in other studies, and continues here. Younger adults, aged 25-40 have reported their frustration at being unable to ameliorate the suffering of their elderly relatives. They are unable to visit their older relatives on a regular or protracted basis because of the lack of housing. For those who do remain behind, housing is crowded. This situation gives rise to tension which is expressed in family disputes, alcohol abuse, domestic violence, and similar behavioral problems.

It is well known that many younger adults have acquiesced to relocation not because of positive opportunities for better housing elsewhere, but because they have simply burned out. The so-called burnout results from the constant anxiety of relocation and of their household situations. These individuals, in fact, often cease to communicate with their families at all. The end result is a breakdown of the extended family system which has been vital to Navajos, as residents of an economic periphery, to adapt to modernizing conditions.

Family dissolution, ironically, frustrates Navajo modernization. Families have long planned to provide income and resources for young people to attend school ad be able participate more actively in a wage and professional income-dominated economy. The family has many times been a source of support to individuals in the face of the economic uncertainty which plagues the Navajo nation. Families are no longer able to plan ahead on their own, and are dependent increasingly on social services which are not made available. This issue will be discussed in more detail below.

Evidence validating these problems in the HPL have long been known. The incidence of these behavioral problems is clearly on the rise in all areas of the Reservation where economic development has brought on a number of social dislocations. The HPL is, in addition, confronted by more traditional problems such as high incidence of gastroenteritis, streptococcal diseases, and other diseases indicative of underdeveloped economic peripheries. These diseases result in a high infant mortality and morbidity. The HPL has the worst of both worlds.

There is evidence of a high dropout rate and lower school achievement among school aged Navajos. This dropout syndrome and low achievement symptomizes these children's insecurity and depression at their own household life. We have witnessed situations in which junior highschool and highschool children drop out of school either to take care of their elderly relatives, or to serve as lookouts for the federal and Hopi Tribal agents who are often seen as harassing these people. Much of this syndrome is aggravated by the fact that both the public schools, supported by the States, and the Federal Bureau of Indian Affairs boarding schools, are not located anywhere near the communities where our children live.

The ability of our young people to participate in a modern world -- one of the purported agendas of the Federal relocation program -- is ironically brought to a standstill.

Long-Term and Social Problems

Much of the anxiety of the older people and the frustration of their younger relatives is based on realistic perceptions of other long-term social and cultural problems. Some of these include the dissolution of religion and the means of cultural transmission, dissolution of community solidarity, and the resulting de facto isolation and abandonment of the elderly who remain in these communities.

Religion and livestock. By reducing the livestock, Navajos find it increasingly difficult either to practice the traditional religion, and to transmit this religion to our children. Not only are livestock an important part of the reciprocity which facilitates the cooperation necessary for ceremonial life. The actual practice of raising livestock is the means by which children learn the generosity, judgement, and respect needed to conduct life as Navajos. Without livestock, younger parents often find that they have no way to impart this knowledge to their children, much less even determine whether or not their children are progressing properly. Ceremonial life thus becomes meaningless.

Religion and land. There is evidence, moreover, that the sacred places on this land are not simply places where religion is practiced. They are also reminders of important historical and legendary events which occurred, and thus the means of recalling them for recounting to the young people. When our people are removed from this land, the means of remembering a non-written tradition are also gone.

The result strikes not only the elderly. The young parents are driven increasingly to vent their uncertainty and frustration in the behavioral problems described above. Again, the behavioral difficulties are well known. Worse yet, many have felt compelled to change their religions, or sometimes even desperately "shop around" for some solace to the present plight. We do not question peoples' rights to change their religion, but we do question the right of Americans to force other Americans through dislocation to change.

Community Dissolution: the elected officials. The threat of relocation hanging over the communities has continued to bring on a number of other community problems. The first, can be called "shoot the messenger." Our elected officials are forced to communicate the bad news of relocation to our communities. Understandably, if not necessarily justifiably, many of these community people take their anger out on the officials, not those who implement the laws. The officials are in a bind. If they cooperate with those implementing the Program, they lose credibility in the community. If they refuse to cooperate, then the Program implementors can later blame them for causing ensuing misery through their lack of cooperation.

There is clearly a lack of incentive for local leadership to rise to the occasions demanded by relocation.

Community Dissolution: the neighbors. We have watched as families become increasingly suspicious, wondering if their neighbors have given in to relocation. We are confronted constantly by rumors of witchcraft by embittered neighbors left behind, and by those who felt themselves tricked into moving. This suspicion fuels the depression and loneliness already caused by the loss of livestock. With no livestock to take up the daily routine, old people especially have nothing else to do but think about the way things used

to be. Their neighbors sometimes wonder if this depression is resentment of some real or imagined wrong, or simply sadness, and wonder if they themselves were to blame. Depression, suspicion and resentment feed on one another.

Community Dissolution: the Navajo Tribe. Many of us are from the communities we serve. We see what is going on and want to help, both as professionals and as individuals. But many people see anybody who tries to help as someone who is "going along with" the Program. This is true even at the Community level, and is true here. The Tribe is thus reluctant to help, even where it can. To make matters worse, the Tribe is often unable even to provide basic health, social and educational services which are almost a basic right elsewhere in the Nation. Home health, social welfare referral, various services to the elderly, housing and insulation, school construction, and a range of other services are impossible to provide because of legal conditions.

Those remaining in these areas often find themselves even more isolated than ever. Not only are they disunited and powerless as a community, but they doubt that even our Tribal government is thinking of them. This fact contributes further to the depression of the people.

Community Dissolution: the Hosts. If they have to relocate, many of our people would like to relocate as short a distance as possible, even if they risk losing some of the so-called benefits they are to receive. They doubt they will receive these benefits in any event, and have heard all too well what happens to those who go along with the relocation. All land in the Navajo Nation is used by somebody. If anybody moves, they take up their new lives at the expense of somebody else, who in turn may have had plans for their own families on land they have traditionally used. These neighbors, or "hosts", thus resent the relocatees.

Worse yet, these hosts ask why they must give up their land while these relocatees receive all sorts of so-called benefits. The resentment is thus aggravated.,

Politically, the Navajo Tribe has had to take on all these problems.

Conclusion: Recommendations

The Mental Health Program of the navajo Division of health thus strongly recommends the following;

1. The threat of relocation is causing suffering in possibly death to our elderly in the Hopi partitioned land and the surrounding areas. We thus strongly recommend that the Senate Committee resolve the land dispute without forcing relocation.
2. We have, for years, maintained that this "holding pattern" has caused such desperation in our communities that their society and culture are falling apart. There are clear statistical indicators of these, and we would like them to be studied and known. We thus need relevant research. This is important because only then can we truly measure the costs and risks of relocation. We can also resolve, once and for all, whether this relocation can really be mitigated, as the federal government has claimed.
3. Our mental health staff have worked with the people suffering, and have done the best we can. But we must be able to do more than simply talking to them and making them feel good for just a while. We need Congressional action and funding which will allow us to provide services to the people — without strings attached. People must know that we wil care for them, even if they do not relocate.

Congressinal representatives may no doubt ask why our people simply do not move and "get it over with," if the suffering is so bad. We cannot answer this question entirely, but we do know a few things. We realize for example, that many have already seen what has happened to those who have relocated. Why acquiesce to something which will result in certain disaster? We also re lize that many have not even been cared for. What credibility is there for local people who hear promises which are demonstrably broken?

And finally, we persist in asking the question: can relocation be mitigated? Is this really the solution? The elderly will be heartbroken when they leave their homes, and their children will suffer — even if they suffer differently. Does the federal government realize this, and do they really know the effects.

We have asked these questions for a long time. We will persist in helping our people by means of whatever program is available — including mental health. We will do this because of an ethical principle: we can't stand by and do nothing. But we have the ethical responsibility of asking: will we really succeed at what Congress has promised?

APPENDIX E

P. O. B ox 417
2850 Painted Desert Drive
Winslow, Arizona 86047
August 5, 1987

The Honorable Chairman, Peter McDonald
The Navajo Nation
P. O. Box 308
Window Rock, Arizona 86515

Re: Relocation:Sand Springs to Winslow, Arizona.

Dear Chairman McDonald,

Please find attached our feelings and complaints about the Relocation Program. What has happened in the process of the relocation process and undoubtly is still happening elsewhere with people not b eing aware of what actually takes place.

We have conferred with Mr. S. Barry Prisner of t he Tuba City Navajo-Hopi Legal Aid Staff Attorney. We supplied him with pertinent materials concerning the attached allegations He said he would check with the Contractor, Charlie Hancock, about the matter and also would confer with the Flag taff Na vajo-Hopi relocation offices.

We are relating ~~these~~ inciden s so that you will know what we are up against in this relocation program. It is obvious that we are literate and yet our trust in the contractor's descriptions and site of the relocation site was altered to the benefit of the contractor and not to the relocatee's desire and preferences.

There are yet more to relate as to the poorest quality of appliances selected and it seems that the expense has been excessive. Even a request to have relocatee's son or relatives to work on the project were refused.

Honorable Chairman McDonald, we do h ope we can be heard as to this complaint and that some equitable remedy can be made.

S incerely,

Larry C. & Pearl H. Barney, S. r.

Larry C. Barney Sr.

Relocation from Sand Springs to Winslow, Arizona

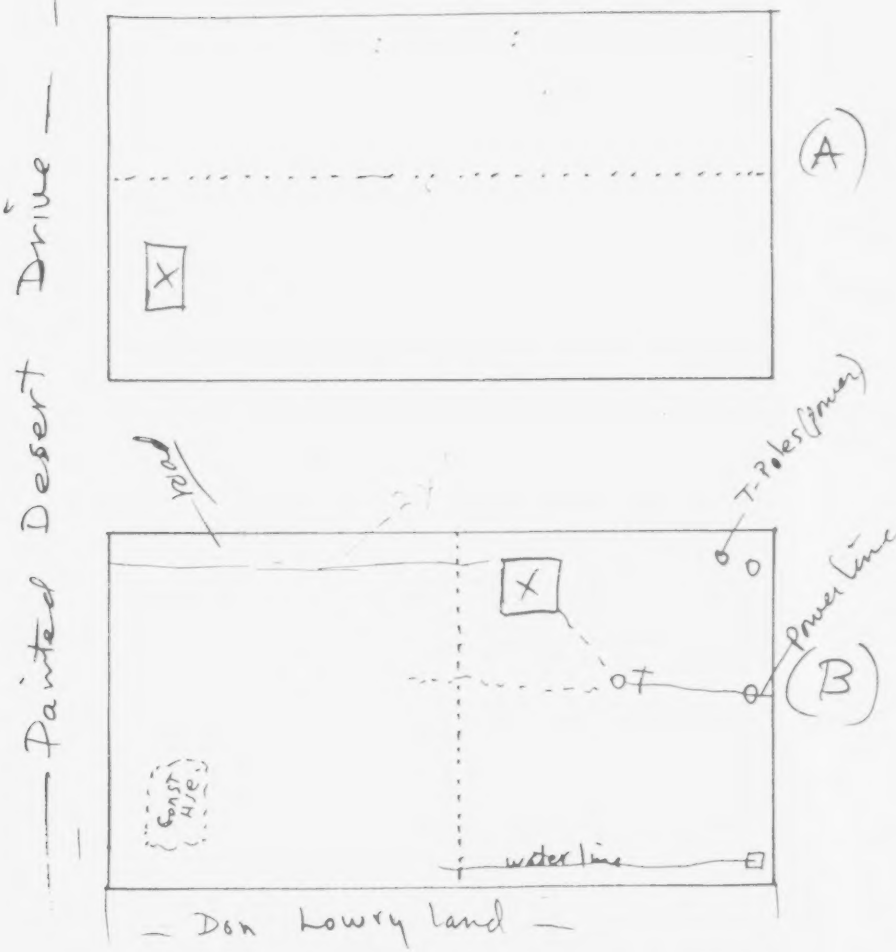
We believe that it is way past time that we express our deepest disappointments and frustrations with this relocation project. To be more specific, please consider the following particulars:

We were led to believe that the original land selection made after two year search with numerous discussions and visitations, that we had selected a definite relocation site that we wanted. And yet, there was actually a switch made or the land partition/house were alter by the contractor.

The contractor happened to be the owner of the land at the time of the land status changes. The whole plan agreed upon previous to signing of the contract was altogether different. The land lot alignment and location was in complete opposite locations. The work had already begun on the altered site location. Even a land plot showing location and site wasn't available for a review and only a legal description which we really didn't know the full terminology indications or not even a sketch of the area was available as an outline of what was actually in the making. The altered land plot and location was never mentioned nor was this shown by a land plot at the time of the contract signing. (see attached diagram).

Mr. Hancock, the contractor, didn't let us know what had actually transpired... that he had bought the land while it was in his name, had conspired and did sign off all the easements and other needed instruments so as to speed up and get all papers approved without discussions or informing the relocatee of what had happen. He informed Pearl that the woman selling the land, Jean Jones, didn't want to sell the portion of the land that she had selected. Within a month after we moved into the relocation house (March, 1987). Mr. Hancock started another house construction on the adjacent land on the west side which he said was not for sale by Jean Jones per his previous information. Evidently all pertinent easements and necessary documents were agreed upon in order to start another construction without hindrance or complications as the land in the front areas was all set in order for this new construction to proceed. Mr. Hancock had bought the land in his name and was the seller instead of Jean Jones. Still, Mr. Hancock went ahead in agreeing with Arizona Public Service (APS); knowing that this land was not his anymore. Pearl was never notified of this arrangment although notation on a document of APS states that she was to be inform of this APS agreement on the powerline easement. Pearl had to contact the APS personally to get this information on June 30, 1987. Still there is no land plot or information forcoming from Mr. Hancock regarding the land plot and agreements made of it.

original selection & partition



Alterated & different partition of present Barney land plot.

Following a trip to the Navajo County Recorder's Office, we got various documents. Still we were unable to procure the necessary easements as the Title Company had made mistakes in the records and listed wrong pages, etc.. To get the needed documents we were referred to the Minnisota Title Company in Flagstaff, Arizona.

The Minnisota Title Company in Flagstaff informed us that they only represent the Hancock Company and that the actual Title Company is in Pine Top, Arizona. The Flagstaff Company made phone calls to the Pine Top Company for us requesting easements that had been made.

The waterline for the adjacent house which is presently being constructed crosses the south side of our land lot; starting at 10½ feet at the main waterline and then existing at 6½ feet at the southwest corner of our land lot.

In relation to this water easement, Mr. Hancock stressed a threat of cutting us off the 12 feet roadway on the northside of the adjacent neighbor's lot if we don't agree to the waterline cutting through our land lot.

Another problem relative to the waterline was that the waterline was put in regardless of our need to cut down the high rise of the land terrain at the southwest corner of the land lot. Although this need had been obvious due to previous discussions and trying to use what remains of our eroded, uneven gullied, hilled, 4 poled overhead powerlines, and waterlined land lot that had been pushed unto us intentionally regardless of our feelings and preferences.

At the present time, we went ahead and graded the low areas so as to make use of the ground surfaces remaining that's been congested with other encumbrances. This was done after informing Mr. Hancock of what we wanted to do. Although he had gone ahead putting the waterline in. We had already planned to cut the high rise features of the land on the southwest side. Mr. Hancock said, "Go ahead and get to the water pipeline and I will drop the waterline deeper later on."

The on-grade grading around the house was not according to specifications of a 5% slope in a 10 feet perimeter. This was particularly bad for the south, southwest, and the east side of the house as the drop was in excess of this gradiant and no leveling of on-grade grading had been made. Even now, considering the northside which is on grade with some excess rises and the other sides need in order to be worked on to retain what packing we had of the sand and gravel around the house.

The evidence of not being on-grade can be noted by the butane concrete stand with its eroding sand and gravel and the extented and exposed stand.

The backdoor (east) exit concrete porch was extenting out and all the gravel packing was eroding with the wind, water, and foot traffic. This porch and the 10feet perimeter wasn't on-grade of 5% slope so we went ahead and hired Hancock to make another concrete extension to prevent the 5 x 5 feet concrete porch from breaking off. It is regretable that we did not supply a photo of the on-grade status of the house perimeter in a 10 feet surrounding.

The extra work involved included the existing concrete porch which Mr. Hancock tried to charge us with ($50.00) and inspite of showing him the dimension figures worked on, he implied that we were saying that he cheated. Which infact was obvious and self-explanatory from the figures we presented him. Not only that, but he went on to say he's charging us the 1.5% over due interest without apology for the intended overcharge (?).

After factor of poor method of charging for services done was that no description of the work done was shown and only the full amount of charge was given. Such as the concrete slab work of 30 feet by 10 feet at $2.00/feet was only noted on the charge slip as cement slab work - $720.00.

In checking with the Winslow City Engineers and the Flagstaff Office of Relocation there wasn't any land plat available with which we can really see what the land really looked like other than the legal descriptions which was a change from what was actually agreed upon and understood by the relocatee.

We would like the Relocation Commission to realize our feelings and desires, since we left from an area where we had more space to use compared to what we have been forced to take for our use and then to have to make payments to live on this congested land and still have all kinds of encumbrances to bear which wasn't of our making or desires. The Commission should endeaver to hire Navajos from the FJUA area who can talk and know the feelings and be in sympathy with the people. Not only that, but show just what is being done and why, instead of getting non-speaking Navajo or non-Navajo thinking people to be in the role of explaining and working with the people. It seems that they are only there so that they can force the people off the land the quick and profitable way for the contractors and without the relocatee's feelings or preferences.

Pearl H. and Larry C. Barney, Sr.
Post Office Box 417
2850 Painted Desert Drive
Winslow, Arizona 86047

Department of Interior Building, Room 5117
18th & C Streets, N.W.
Washington, D.C. 20420

September 20, 1985

Memorandum

To: William P. Clark

From: Richard C. Morris

Subject: Navajo and Hopi Land Settlement Act

This is written confirmation of matters upon which we had conferred and reached conclusions and understandings relative to differences confronting the Navajo and Hopi Indian Tribes. It is further understood that the matters herein reported shall form the basis for your verbal presentation to President Reagan. Additionally, this material will be provided to those persons and agencies of government having a particular interest in resolution of intertribal differences.

On February 8, 1985, President Reagan commissioned you to determine if agreement could be effected between the Tribes over differences in implementation of the 1974 Hopi and Navajo Land Settlement Act and the 1980 amendment hereto (hereinafter, the Settlement Act). The Act requires, among other things, the relocation of Navajo tribal members from lands partitioned to the Hopi Tribe pursuant to the Settlement Act. You associated me, your former Counselor while at the Department of the Interior, to assist in this effort.

During the past seven months we have conferred with Chairman Peterson Zah of the Navajo Nation, with Chairman Ivan Sidney of the Hopi Nation, with other leaders in each nation, with tribal members affected by relocation as mandated in the Settlement Act, with concerned agencies of government and other institutions and persons having special knowledge of intertribal differences. We visited the disputed areas and those persons subject to relocation. We have made a serious attempt to understand particular associations and situations which threaten full implementation of the governing statutes. Those understandings probably cannot be fully achieved except by one who has experienced in depth the culture and traditions of both the Hopi and the Navajo Tribes. Our exposure to those cultures and traditions, while falling short of that necessary for a complete understanding, has nevertheless been sufficient for our purposes.

We approached this assignment with recognition that the issues to be addressed are governed by laws, and we have consistently urged compliance with relocation processes as mandated by governing statutes. However, our particular effort, as directed in the President's letters of February 8 to the Chairmen, is not to bring about compliance with the law. Other agencies of government have that responsibility. Rather, we sought to determine whether there were resolutions in which the Tribes could voluntarily join. Such resolutions could be effected either under existing law or changes in the law designed to accommodate tribal agreements.

It follows, of course, that should either Tribe irrevocably conclude that it is not in its individual best interest to negotiate with the other for an agreement, an agreement would not be possible. This does not mean that problems which confront the Tribes under existing law cannot be resolved, but only that they cannot be resolved by voluntary agreement between Hopi and Navajo. Agencies of government apart from our efforts have responsibility and authority for initiating processes to correct what they may deem to be improper or unjust. Some persons have, in error, assumed that the President's appointment vested in you an authority to make depositive decisions and to take unilateral actions. We have consistently advised, on each occasion when the question arose, that you lack such authorities. Those authorities and responsibilities to initiate actions remain with the vested agencies of government. Lacking agreement between the Tribes or change in existing law, it is clear that the relocation of Navajo from Hopi lands must go forward.

Historical Background

Limitations do not permit a full development of the centuries-old differences between Hopi and Navajo. Literally thousands of papers have been researched and written on those differences, generally posing contrasting solutions, many of which differ from solutions provided by existing law.

Few dispute that the Hopi have a longer authenticated history in North America than any other ethnic group. Today they occupy the same villages on high mesas in northeastern Arizona occupied by their ancestors centuries ago. They have been generally a peaceful people and, admirably, their Tribe is one of a very few which had no occasion to enter a treaty with the United States--perhaps to the Hopis' disadvantage. In 1882, President Arthur, by Executive Order, granted the Hopi a reservation in what is now northeast Arizona consisting of a rectangular area of approximately 70 miles in its north-south dimension and 55 miles in its east-west dimension (2,500,000 acres). At that time there were approximately 1,800 Hopi living on the reservation, and today that number has grown to approximately 11,000.

Although there is disagreement on when the Navajo first entered the area they now occupy in Arizona, New Mexico and Utah, their presence occurred much later than the Hopi presence but earlier than the arrival of the white man in the sixteenth century. The Navajo moved about in the area, becoming involved in confrontations with neighbors. In 1863, Colonel Kit Carson led a military force which impounded the main body of Navajo near Fort Sumner in New Mexico. In 1868 the United States entered into a treaty with the Navajo pursuant to which they were granted a reservation overlapping the northern Arizona-New Mexico border. That reservation has been successively expanded, mainly in a westwardly direction, and today is as large as the State of West Virginia (approximately 16,000,000 acres) and completely surrounds the Hopi reservation. Since 1868 the approximately 8,000 Navajo on the reservation has increased to approximately 165,000.

Intertribal problems might well be expected when a smaller, probably less aggressive Indian nation occupies an island reservation within the reservation of a much larger, expanding Indian nation. However, the problems and their solutions are far more complex than those arising merely from the physical juxtaposition of the two reservations. In major part, the complexity arises from historical, cultural and traditional considerations.

Life styles of the two Tribes following establishment of the reservations led to immediate problems. Hopis generally limited their living areas to their mesa villages concentrated near the center of the reservation (hereinafter referred to as District 6), using the outlands for grazing, growing, gathering and religious and cultural purposes. The more nomadic Navajo wandered onto and lived within the 1882 Executive Order reservation. While that Executive Order provides a reservation "for the use and occupancy of the Moqui (Hopi)," it further ambiguously provides for use and occupancy of "such other Indians as the Secretary of the Interior may see fit to settle thereon." There were at least 300 Navajo residing on the reservation in 1882, and in following years their population increased significantly. The ambiguity of the Executive Order led to conflicting claims of entitlement to the 1882 reservation area. Efforts to resolve the controversy were unsuccessful, and in 1958 the Congress authorized commencement of court proceedings to determine rights and interests of the Tribes "as may be just and fair in law and equity." At that time there were almost 9,000 Navajo on the 1882 reservation, a population significantly larger than the entire Hopi population. In the same year the Hopi commenced an action which became known as Healing v. Jones in the Untied States District Court of Arizona.

The District Court rendered its decision in the Healing case in 1962. In support of its judgment the court made extensive findings of fact. Many of these findings continue to be challenged, as they were during trial. We neither challenge nor confirm findings relative to

historical and religious matters and we must accept as final those determinations made by an institution of our government which has addressed them in due process proceedings. Perhaps most significantly, the court found that while the Secretary of the Department of the Interior never expressly "settled" Navajo on the 1882 reservation as authorized by the Executive Order, it was deemed that the Navajo had been impliedly settled by virtue of Secretarial inaction to Hopi complaints, thus condoning Navajo presence. The court appeared to find that the Hopi had been disadvantaged by such inaction and the ever expanding needs of the enterprising Navajo population, neither of which the Hopi could control. It describes the Navajo as having a "proclivity to commit depredations against the Hopi," and the government as reticent to antagonize the Navajo. It states that the failure of the Hopi to make fuller use of the 1882 reservation outside of District 6 "was not the result of a free choice on their part. It was due to fear of the encircling Navajos and inability to cope with Navajo pressure." The court nevertheless concluded that both the Navajo and Hopi Tribes had been settled on the 1882 reservation. It declared that, subject to the trust title in the United States, the Hopi Tribe has an exclusive interest in District 6 and that the Hopi and Navajo Tribes "have joint, undivided and equal interest in and to all the 1882 reservation" other than the area of District 6. The "Joint Use Area," as it became known, occupies approximately 1,900,000 acres of the 2,500,000 acre 1882 reservation.

The District Court concluded that the 1958 enactment authorizing the Healing litigation did not confer jurisdiction upon it to divide the Joint Use Area (JUA) into equal exclusive enclaves for each the Hopi and the Navajo Tribes. That division was left to the Settlement Act in 1974. In principle part, the act provides for mediation by the Tribes for partition of the JUA, for recommendations to the court in supplemental Healing proceedings to be made by a mediator should the Tribes fail to agree on partition, and for court partition of the JUA. Only the surface rights of the JUA were subjected to partition, with the Tribes retaining their joint and undivided interests in subsurface mineral resources. The act also establishes the Navajo and Hopi Indian Relocation Commission, and charges the Commission with reporting on, accomplishing and paying for the relocation of Hopi and Navajo families away from lands partitioned to the other Tribe. Relocation is scheduled for completion on July 6, 1986. After that date, those Indians remaining on lands not apportioned to their Tribe will technically be trespassers subject to eviction and other judicial processes.

The Tribes were unable to agree on partition and a partition line equally dividing the land area of the JUA between the Hopi and Navajo Tribes was eventually fixed by a mediator and approved by the court. Fixing the line was extremely difficult because of the very large population of Navajo throughout the JUA. While centers of Navajo population were sought to be included on the Navajo side, the line

could not be drawn except with large Navajo populations on the Hopi side. There were approximately 12,000 Navajo and only 100 Hopi subject to relocation by placement of the line. In some instances Navajo families had resided on what became Hopi Partition Land (HPL) for generations dating back before the 1882 Executive Order. Other relocatee families were those of veteran World War II Navajo Code Talkers who contended they had fought to protect their right to these lands. Others were families who once before had been subjected to relocation when they were first required to abandon their Navajo homes within District 6.

Anticipating the need for additional lands to accommodate the large numbers of Navajo to be relocated, the Congress provided for the acquisition of 400,000 acres of new lands by the Navajo for annexation to their reservation. This acquisition would approximate 42% of the area of the HPL from which Navajo were to be moved. The 400,000 acres consists of 150,000 acres to be acquired in fee by the Navajo, and 250,000 acres to be acquired by the Bureau of Land Management (BLM) for transfer to the Navajo. The Navajo have acquired their fee lands (The Bar N Ranch) and the BLM, through extraordinary effort, is in the final process of completing acquisition of the adjoining ranches which make up the new lands. All the new lands will be adjacent to the present reservation in Arizona except for 35,000 acres in New Mexico, on which valuable coal deposits are located (the Paragon Ranch). BLM acquisitions in Arizona are of surface rights only and the acquisition process is being challenged by the Santa Fe Pacific Railroad Company, which owns underlying mineral interests. Santa Fe claims the BLM is required to acquire and transfer to the Navajo Tribe Santa Fe's mineral interests as well as the surface interests of the new lands.

At the present time the new lands are undeveloped, without adequate roads, water, fencing, food sources and infrastructures necessary to support relocatees. No provision has yet been made by the Congress or the Navajo Tribe to provide these resources.

Intertribal Differences Other Than Relocation

The 1882 reservation relocation problem is not the only major dispute confronting the Navajo and Hopi Tribes. By Act of Congress in 1934 ("The 1934 Act"), the boundaries of the Navajo reservation in Arizona were defined and certain lands designated "for the benefit of the Navajo and such other Indians as may already be located thereon." The Hopi have long claimed rights arising out of The 1934 Act. A well-established Hopi village, Moencopi, exists within the Navajo reservation in Arizona. Pursuant to long ignored Hopi claims, in 1966 Indian Commissioner Robert Bennett imposed a "freeze" (to become known as the "Bennett Freeze") on a large area within the Navajo reservation lying westerly of the 1882 reservation. The freeze precludes improvement within the area--as, for instance, improvements to a residence--without the concurrence of both Tribes. The freeze was

intended to be short lived, the Commissioner hoping it would influence the Tribes to soon settle their differences. However, the freeze has continued for a score of years, working mainly to the disadvantage of Navajo who seek to improve their living conditions within the area.

The Settlement Act of 1974 expressly authorized the commencement of litigation to resolve claims of interest within areas described by the Act of 1934. The Hopi Tribe immediately commenced a suit, claiming an undivided one-half interest in a large portion of the Navajo reservation in Arizona. The Navajo answer to the complaint concedes only the Moencopi area to the Hopi. A partial judgment has been entered, denying the Hopi claim of a one-half interest in all the disputed lands, but holding that Hopi has an exclusive interest to all lands that were exclusively "occupied, possessed or used" by Hopis in 1934, and a one-half interest in lands jointly "occupied, possessed or used" in 1934 by Hopi and Navajo. The 1934 litigation is at a standstill, pretrial discovery not yet having been completed and a petition for intervention by the San Juan Southern Paiutes, who also claim tribal rights to a portion of the 1934 area, not yet having been resolved.

Other significant litigation is also at issue. In the main, these suits arise out of the Settlement Act, Navajo continued occupation of the HPL, and alleged failures of United States officials. In all these suits it is Hopi who are the complainants. The following actions are pending in the United States District Court for the District of Arizona, unless otherwise indicated.

Sidney v. Zah is a supplemental proceeding to the Healing case. As authorized by the Settlement Act, Hopi seeks a payment from Navajo to balance the lesser resource value Hopi claim to have received under partition of the JUA. Navajo claims U.S. responsibility for this payment. Hopi also seek to hold the Secretary of the Department of the Interior in contempt for failure to complete stock reduction of Navajo flocks on the HPL, and failure to complete a five-mile portion of a fence required to be constructed along the JUA partition line. The gap in the fence has been kept open in part through efforts of persons sympathetic to Navajo in an area known as Big Mountain in the HPL. The Hopi claim may approach $100,000,000.

Hopi Tribe v. Hodel, Hopi seek rental payments for Navajo use of the HPL pending relocation of Navajo. The Secretary has recently placed a grazing fee value of $1,300,000 for use of these lands during the period 1978 to 1982.

In Hopi Tribe v. United States (U.S. Court of Claims), Hopi seeks money damages against the United States for the alleged failure of the Secretary to collect trespass penalties, damages to land caused by

failure of Navajo shepherds to keep animals off HPL, and the value of forage consumed by trespassing animals. In two other suits the Hopis seek similar damages against the Navajo Tribe.

Status of Relocation

All Hopi originally on Navajo Partition Land (NPL) have been relocated, and pose no problem. Many Navajo families have been relocated from HPL, although not all relocations have been successful. A significant number of Navajo who voluntarily accepted relocation to off-reservation, urban areas have suffered severely. Particularly the older—or traditional—families have been unable to cope in an urban or even suburban environment. Some could speak only in their native tongue and had no marketable skills. They had no understanding of municipal taxes, utility services or maintenance of the simplest mechanical devices in their modern homes. They soon were in debt and became victims of unscrupulous lenders. Many lost or sold the homes provided by the Relocation Commission, probably the central reason they had agreed to move in the first instance. Many suffered severe emotional traumas when placed in an environment in which they could not cope, and now regret their decision to move. The Relocation Commission, whose task under the Navajo and Hopi Land Settlement Act is a most difficult one, has instituted procedures designed to better assure the success of relocations, both on and off the reservation.

There remain on the HPL today a disputed number of Navajo families subject to relocation. According to the Relocation commission, there are approximately 350 families (often an "expanded" family, but generally four to six members) who continue to reside on HPL. Of these, approximately 300 families have voluntarily agreed to be relocated, leaving 50 families who refuse relocation. The Navajo claim this number is much larger and, while visiting throughout the HPL, it appeared to us that there are indeed many more than 50 families who adamantly reject relocation. It may be that our chapter meetings with Navajo on HPL were attended by other Navajo who added their voices to those of the chapter members, and that our perception that there are more than 50 dissident families is in error. Or it may be that some who earlier indicated a willingness to relocate have reconsidered in view of the experiences of those who have undergone relocation. In any event it appears clear that a substantial number of Navajo now on HPL will reject voluntary relocation and stand firm against forcible eviction after July 6, 1986. There is also sound reason to believe that those Navajo who choose to physically resist relocation will be encouraged and assisted in that effort by others, both Indian and non-Indian activist. We have received communications from numerous persons who overwhelmingly support the right of the Navajo traditionalists to remain on the lands of their ancestors. A forced relocation, of course, is the very thing we hoped could be avoided.

The Case for the Hopi

Following is a statement of the case for the Hopi as if stated by an advocate for that Tribe. Following that statement, we next make the case for the Navajo, again as if stated by an advocate for that Tribe.

History is on the side of the Hopi. Lawyers will conclude that they are entitled to what the law now provides. They have consistently abided by the law, as that law has been thrust upon them by the United States Government. In 1882 they were vested with land which--they still argue--was their exclusive reservation because the Secretary of the Department of the Interior never "settled" other Indians on those lands although he was expressly authorized to do. They lost that argument in the Healing case because Navajo encroachments onto the reservation were condoned by the Secretary through inaction, sometimes deliberate, in response to numerous Hopi protests. While the Hopi believe the Navajo thus profited by their aggressions, the Hopi have nevertheless accepted the court's decision in Healing and the subsequent congressionally imposed partition of the JUA. That partition resulted in the transfer of 950,000 acres of Hopi lands to the Navajo, who already have a reservation area ten fold that of the Hopi. The Hopi, in accepting what they deem to be injustices, argue that the former land dispute has thus been finally settled and there is no longer a need for negotiations.

To even propose to the Hopi that they should surrender some of the HPL in favor of the Navajo is taken by the Hopi as in bad faith. Their religion and culture do not permit them to sell their land, whatever the exchange, as only land has a real and lasting value. Land is the only commodity which protects future generations, and to surrender it would be a breach of Hopi religious and cultural responsibilities.

More practically, the Hopi point out that their reservation, being an island within the Navajo Reservation, cannot be expanded in any direction. However, the Navajo can continue to expand the unrestricted borders of their reservation to accommodate future needs, and they have constantly sought such increases over the last century. They will shortly acquire another 400,000 acres of new lands. How, the Hopi ask, can you propose the further surrender of some of our limited lands to the insatiable demands of the Navajo Tribe? If it is because Navajo on Hopi lands may be distressed because they must relocate, a line must be drawn at some point else Hopi will eventually be consumed by the Navajo. The Hopi conclude that the Congress and the courts have drawn the line and the United Sates Government must abide by the law which it has fashioned. The Navajo Tribe must also abide by that law because, according to Hopi, the Navajo has not offered to surrender enormous benefits which the law has accorded to them in anticipation of Navajo compliance with the relocation process.

The Case for the Navajo

Navajo leaders have long advocated repeal of the Settlement Act, but now appear to recognize that, because of substantial performances under the act, injustice and confusion would be created by repeal. They nevertheless seek amendments which would ease the burden of relocation.

Unlike the case for the Hopi, the Navajo case does not depend on overall tribal concerns as much as it depends on personal concern for those Navajo subject to relocation. It is difficult to appreciate these concerns without an understanding of the traditional Navajo perception of family lands. While many Navajo appear to have easily adapted to the customs and ways of the white man, the true traditionalists--those who speak only Navajo, who have not had the opportunity to attend reservation schools and depend for their livelihood on skills acquired in tending the fields--have a special feeling for the land, particularly for that immediate land on which the traditional residence, or "hogan," is located. This feeling is founded in part on ceremony and theology, including the positioning of the hogan to face the rising sun and the burying of the umbilical cords of the newly born. Thus, removal from family lands to strange lands, even though to other Navajo reservation lands, creates a sense of failure accompanied by severe emotional trauma and withdrawal. Some who are threatened by relocation conclude that because their lives would serve no further purpose in a strange environment, they would prefer to sacrifice their wasted lives by resisting relocation. To such Navajo, any inducement for relocation is insufficient.

While it is true that the Hopi legally own--subject to the federal trust--the land on which traditional Navajo now reside, such Navajo totally reject the concept of ownership of reservation lands. Land is the "mothergod," not owned by any temporary possessor. They argue that it is they who are closest to the particular lands they and their ancestors have occupied for as long a time as memory serves regardless to whom our government has conferred a title. They, their children and their ancestors were born and buried on these lands. They have collected herbs, tended flocks and protected the land against the elements and trespassers. They are the ones who have been charged by culture and tradition with maintaining and protecting the land for future generations. To these Navajo, those Indians who live elsewhere claiming title to lands they only occasionally walk over are the true intruders. If Navajo are forcibly removed, their hogans will be destroyed and they will be replaced on the land by sheep or cattle, if replaced at all.

The case for the Navajo is not one for the Navajo as a nation, but rather for those individual Navajos subject to a relocation which may be life threatening, emotionally and physically. Whatever the conduct of Navajo a century ago, the Navajo now subject to relocation are not

yet guilty of wrongdoing. If the Hopi were victims of federal inaction during the last century, surely today's traditionalists Navajo are victims of the relocation process as fashioned by the Congress.

Proposals for Resolution

Early in February 1985 we met with the Chairmen of the Hopi and Navajo Tribes on the 1882 reservation. We obtained from each a commitment for a good faith effort to reconcile their differences.

It was our initial perception that the key to resolution of the whole multitude of issues confronting the Tribes was some agreement on relocation of Navajo from HPL. Should such an agreement be reached, it seemed likely that the Tribes could resolve their many other problems. At the same time, if agreement on relocation could not be reached, it seemed unlikely the Tribes could ever reach other issues. That perception still prevails.

One solution of the relocation issue is, of course, full performance under existing law resulting in removal of Navajo from HPL, voluntarily or involuntarily. Our mission has been to determine whether there is an alternate solution. We could see only two possible alternate solutions. One was to redraw the JUA partition line to include on the Navajo side those or many of those Navajo now residing of the Hopi side. It was clear that the line could not be redrawn simply by including on the Hopi side former Navajo lands equal in size to former Hopi lands to be included on the Navajo side. Because of the heavy population of Navajo along the line, such an exercise would merely subject different but approximately equal numbers of Navajo to relocation, thus solving no problem. Obviously, the Hopi would have to be compensated in some manner for lands given up. Much of our effort on the reservations was expended exploring with the Hopi leadership their response to <u>any</u> proposal which would have required some exchange of HPL. Although we persisted in our effort to discuss land exchanges, the Hopi never indicated a willingness to discuss exchanges and never submitted an exchange proposal. Eventually, we were advised that whatever the resource value of assets to be exchanged, the Hopi could not willingly surrender even an acre of HPL.

We have reluctantly accepted the fact that, at this time, the Hopi cannot or will not negotiate for an exchange of HPL. In a sense, this was unfortunate for the Hopi, as we were ready to propose that in return for some Hopi lands along the partition line--lands that are central to the dispute--the Hopi would receive assets of much greater resource value encompassing the full range of the multitude of differences besetting the Tribes. Such a proposal could have tendered to the Hopi lands included in the 1984 Act, some portion or all of the BLM new lands, a greater interest in jointly held coal royalties and jurisdiction of mineral leases, favorable resolution of some or all of the pending lawsuits including the suit based on the 1934 Act, some

interest in a public-private joint venture for development of the mineral resources of the Paragon Ranch, or increased interest in other valuable resources.

The Navajo were, and remain, ready to negotiate for land exchanges. Proposals were submitted to us by the tribal leadership as well as by individual Navajo chapters on the HPL. The chapter proposals seek individual resolutions within the immediate areas of chapter locations. Generally, the initial Navajo tribal proposals were deemed by us to offer insufficient resources to warrant surrender of the disputed lands by the Hopi. Nevertheless, those proposals were within range of what we would have deemed to be adequate and, given the flexibility which the Navajo demonstrated throughout our discussion, we saw their proposal to at least state a negotiable position. Chairman Peterson Zah, throughout our discussions, exhibited courage and a motivation to ease the burden of those subject to relocation. He demonstrated his willingness to commit tribal resources to preserve traditional homesites, fully aware that there was considerable intratribal political risk to himself. However, the Navajo proposals were never communicated to the Hopi as all such proposals would have required surrender of HPL and, we were advised, to submit such a proposal would constitute an insult to the Hopi.

The remaining possible basis for an agreed resolution not involving a land exchange, is an arrangement for permitting entrenched Navajo to continue to remain on lands they occupy while recognizing Hopi jurisdiction. The Settlement Act provides for life estates for qualifying Navajo but, because Navajo saw these as too restrictive and, in effect, constituting "death estates," the statutory provisions have been rejected by Navajo.

We met with the Chairmen of the two Tribes in Washington on August 6 and 7, for the express purpose of determining whether the Chairmen could reach an understanding for negotiating an arrangement for Navajo to continue to reside on HPL. It was recognized by the Navajo at this meeting that the HPL was, in effect, Hopi land and that Navajo who might remain on the land would necessarily be there only as "tenants." At issue were matters such as who could qualify as tenants, the total number who might so qualify, whether new families could take up residence, whether new homes might be constructed, who would have jurisdiction to police and manage the occupied lands, what rental to pay for occupancy, what time limitations might be placed on the occupancy, and others. A memorandum of understanding was discussed and prepared but not signed, principally because Chairman Sidney stated that he could not do so without first obtaining approval from the Hopi Tribal Council, the executive body of the Hopi. Chairman Peterson Zah presented a modified version of the memorandum which, he said, he had been authorized to sign. The Chairmen and their advisors left Washington, and Mr. Sidney sought the advice of his constituency. On August 21 we were informed by Mr. Sidney that the Hopi were unable to

execute a memorandum of understanding in part because, on earlier occasions, both the government and the Navajo had defaulted on other "agreements." Mr. Sidney further explained that the Hopi leadership were of the view that they, being the landlord of lands sought to be occupied by Navajo, would unilaterally fix the terms and conditions of occupancy; that those terms and conditions were not negotiable with the Navajo. He stated, and exhibited documents which supported his statement, that the Hopi were then in the process of developing a plan for occupancy of their lands; that the plan required the confirmation of each village within the Hopi Nation; and that he would present and explain the plan to us when fully developed and confirmed. the confirmation process is still ongoing and we cannot speculate on its content as being sufficient to satisfy either those Navajo subject to relocation or the Navajo Nation.

We stated earlier that our mission was to determine whether agreement could be effected between the Tribes, and we noted that an agreement would not be possible should either Tribe deem it not to be in its best interest to negotiate with the other. We also noted that there were but two bases for negotiations designed to relieve the burden of relocation—land exchanges and permissible living arrangements for Navajo on Hopi lands. The Hopi have made it abundantly clear that at this time neither concept is negotiable.

We think it must be understood that we believe the Hopi have concluded in good faith that it is not in their best interest to negotiate; that implementation of the current law better serves their interests and accomplishes what they deem to be substantial justice. While we may disagree with that conclusion, it is an internal decision which the Hopi must make and, we believe, has honestly been made by a consensus. As stated, the executive function in the Hopi Tribe is exercised by the Tribal Council and that council has lacked a quorum during all or a major portion of the time we have communicated with the Hopi. However, the decision not to negotiate has been conveyed to us by not only the Chairman but by other tribal leaders, including individual council members, by a negotiating committee and by the politically powerful leaders of the villages. There remain some traditional leaders, supported by Hopi who have intermarried with Navajo, who are opposed to relocation of their Navajo brother. They appear to represent a minority of those who speak to the issue, and their voices have not been effective. Nevertheless the consensus view remains in some little doubt as, traditionally, the Hopi indicates dissent by nonparticipation rather than by expressed opinion. While the difficulty of decision making within the Hopi Tribe has posed some problems for us, those problems have also been experienced by Chairman Ivan Sidney, who has cooperated with us to the full extent that he is able. His first allegiance in these matters, of course, must be to the Hopi Tribe. He has well served that allegiance and, at the same time, accommodated our mission.

Conclusion

It is regretted that both Tribes do not embrace negotiation as a means of solving their complex differences. After a century of standing their ground on fundamental issues, they continue to look for others to provide solutions. In our view, negotiated resolutions on the broad range of differences confronting the Tribes would lead to far better results than would resolutions imposed by the courts or by the Congress. More importantly, good faith negotiations would create an improved relationship for badly needed cooperation between the Tribes. In July we were invited with the Chairmen and their representatives to attend and take part in an informal discussion of legal issues confronting the Tribes in the Chambers of Judge Earl Carroll of the Federal District Court for the District of Arizona. Judge Carroll urged the Tribes to embrace the President's initiative. He stated that legal proceedings then before his court would take years to resolve at costs of millions of dollars with likely unhappy results for each Tribe. He also said that the Tribes should not look to the Congress to solve their differences, as Congress and the Bureau of Indian Affairs had been, in part at least, the source of the problems; that the President's initiative, even if it resulted in only an agreement for binding arbitration, was an opportunity the Tribes should seize. We, but not both Tribes, were persuaded by Judge Carroll's recommendations.

In performance of our mission to determine whether the Tribes can reach agreement for accommodating the concerns of each other, we have been urged to fix responsibility for the situation in which the Tribes find themselves. We do not think it would be productive to do so. We can, at least to some extent, understand and appreciate the basis for the contentions of each Tribe and have great sympathy for the positions urged by them.

There are presently no remaining issues before us in our effort to determine the likelihood of resolution through negotiation. While the Hopi have made it clear that they cannot now negotiate for a resolution of the relocation problem—a "problem" the Hopi do not recognize—we cannot foreclose some further opportunity for negotiations should events, including tribal perceptions of forthcoming Congressional action, motivate the Tribes to negotiate. However, it seems unlikely that there will be tribal agreement between now and July 6, 1986. Time constraints demand that the responsible agencies of government now undertake whatever action they deem appropriate to solve intertribal issues. If action is to be taken, it is hoped that the whole range of issues--not just today's relocation problem--be addressed. Unless a comprehensive plan be thoughtfully developed and put in place, fundamental tribal disputes may persist for still another century.

DEPARTMENT of the INTERIOR
news release

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BUREAU OF INDIAN AFFAIRS

For Release June 13, 1986

Carl Shaw 202/343 4576

ASSISTANT SECRETARY SAYS JULY DEADLINE FOR NAVAJO RELOCATION NO LONGER VALID

Assistant Secretary Ross Swimmer today emphasized there will be no action by the federal government next month to forcibly remove Navajo families from land belonging to the Hopi Indian Tribe in Arizona.

"There will be no federal action to evict the Navajos remaining on the Hopi partitioned lands on July 6," Swimmer, Assistant Secretary for Indian Affairs, said. "Apparently, some people are unaware that Congress has recognized that we cannot meet a July 6 deadline for completing relocation in the Navajo-Hopi settlement. Yet we continue receiving calls from the media and from individuals who mistakenly believe there will be a confrontation on the issue next month."

Legislation enacted in 1974 to settle a land dispute between the Hopi and Navajo tribes required the relocation of many Indians. In 1981, a deadline of July 6, 1986, was set for completion of the relocation, but Congress last December recognized that it would take longer to complete the resettlement of Navajo families still remaining on Hopi partitioned lands.

"Congress has told us that none of the Navajo families now living on lands partitioned to the Hopi Tribe can be relocated until such time as replacement housing has been provided for them," Swimmer noted. "And Congress allocated about $22 million for the BIA to construct housing for Navajos yet to be relocated."

Swimmer said the Bureau of Indian Affairs (BIA) is working closely with the Navajo and Hopi Indian Relocation Commission under an agreement put into effect on February 25, 1986, to complete the relocation. The Commission was created by Congress as the primary agency for relocation.

"The BIA policy is to pool our expertise with that of the Commission to complete the job," Swimmer said. "We are not attempting to replace the Commission. We have a partnership in the commitment to see that the Navajo families are provided appropriate housing, useful counseling and other assistance necessary for an improved lifestyle in their new locations."

Congress specified that the BIA construct houses on what is known as "new lands" -- some 250,000 acres of land given the Navajo Tribe by the federal government and 150,000 acres of land purchased by the Tribe.

The Commission continues to have responsibility to construct relocation housing for those Navajos who choose to relocate on the previously existing Navajo Reservation lands or at an off-reservation site.

Swimmer, who visited the area where most Navajos awaiting relocation are residing, said he believes that nearly all of them will agree to move when they are assured that appropriate housing and grazing lands will be available.

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The Legislature

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38TH Legislature, 1ST Session

LAWS 1987

CHAPTER _____

HOUSE MEMORIAL 90

Introduced by

REPRESENTATIVE ALBERT SHIRLEY
REPRESENTATIVE THOMAS E. ATCITTY
REPRESENTATIVE LEO C. WATCHMAN

GREAT SEAL OF THE STATE OF NEW MEXICO
1912

A MEMORIAL

DEPLORING THE FORCED RELOCATION OF NAVAJOS BY THE UNITED STATES CONGRESS.

WHEREAS, the United States congress has passed laws to force the removal of twelve thousand Navajos from lands which they have occupied for generations; and

WHEREAS, the forced relocation by the United States congress of these twelve thousand Americans is an injustice unworthy of America; and

WHEREAS, in instances where large groups of non-Indians were deemed to be living on lands illegally taken from Indians, the United States government has not forced removal of thousands of people; and

WHEREAS, the Navajos who are being forced to relocate from the reservation interior have heretofore been buffered by the rest of the reservation and are less accustomed to modern culture than most Navajos; and

WHEREAS, the Navajos who face relocation and those who have been relocated are suffering culturally, emotionally, physically and economically; and

WHEREAS, New Mexico is directly affected by this relocation because some of those being relocated will be settled in New Mexico and many Navajos in New Mexico have relatives who are hurt by the relocation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that it deplores the forced relocation of Navajos who are American citizens and calls upon the United States congress to take all necessary steps to stop the relocation and to alleviate the suffering of those who have already been displaced; and

BE IT FURTHER RESOLVED that in the future the United States congress refrain from passing legislation to relocate whole communities of Indians and other American citizens; and

BE IT FURTHER RESOLVED that a copy of this memorial be sent to the chairman of the Navajo tribe, the speaker of the United States house of representatives, the president pro tempore of the United States senate and each member of the New Mexico congressional delegation.

S/RAYMOND G. SANCHEZ
RAYMOND G. SANCHEZ, SPEAKER
HOUSE OF REPRESENTATIVES

S/STEPHEN R. ARIAS
STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

UNITED STATES GOVERNMENT
NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK, FLAGSTAFF, ARIZONA 86002

January 26, 1988

MEMORANDUM TO: Christopher J. Bavasi
Executive Director

FROM: David Shaw-Serdar
Research Officer

SUBJECT: Water Quality of the Rio Puerco

SUMMARY

A number of studies of water quality in the Rio Puerco have been conducted since the 1979 Church Rock uranium tailings spill. The most recent, and probably most definitive as far as the relocation program is concerned, are a 1987 "reconnaissance" by the US Geological Survey and an accompanying health risk assessment by the Environmental Protection Agency.

USGS examined a portion of the Rio Puerco in the area of the New Lands, and found radionuclides in five of 14 wells sampled. The concentration of radium 226 plus radium 228 exceeded the primary water quality standard of 5 pCi/L in one well. Concentration of uranium exceeded a recommended limit of 0.035 mg/L in two wells. Perennial grass and sediment samples had low concentrations of radionuclides. The health risk assessment of these findings by EPA determined that there was not sufficient contamination in any of the water well samples to constitute a large health risk -- although prolonged consumption of water from roughly one-third of the wells by the same persons may require caution, such as finding alternative water supplies or installing treatment equipment.

This memorandum report reviews a number of studies of water quantity and quality on the New Lands and the Rio Puerco.

The Rio Puerco studies emphasize that portion of the river that flows through the New Lands. The New Lands studies are limited to those that were undertaken to assist the Navajo Tribe's land acquisitions under Public Law 96-305. The general approach used by the Commission to develop water at the New Lands relocation sites is described. The results of water quality tests at specific New Lands relocation sites are not discussed because of the focus on the Rio Puerco and pre-development studies of the New lands.

A review of USGS's proposed Puerco and Little Colorado River Basins Study concludes the memo, and a listing of selected major references is attached.

BACKGROUND

The Navajo Tribe selected land for acquisition under Public Law 96-305 from April 1982 through March 1986. The lands were acquired by the Bureau of Land Management for the Navajo Tribe and taken into trust from November 1984 through January 1987. The Commission supported the Tribe's efforts by making funds available for studies of minerals, water, range potential, etc. A number of these studies were done in 1983 by the Tribe's Office of Navajo Land Development on lands that were ultimately not selected -- Winslow-Holbrook tracts; selected BLM tracts; Turquoise Ranch and vicinity; 77 Bar and Anita Ranches; and Babbitt Ranch. ONLD also evaluated the Spurlock Ranch. The Commission's consulting firm CH2M Hill did studies in 1984 and 1985 on the Kelsey, Fitzgerald, and Wallace Ranches. CH2M Hill also assessed a number of sites the Tribe identified for selection which were not included in its final selection.

As the New Lands were acquired, the Commission assumed administrative control over them and began planning their development. CH2M Hill prepared New Lands planning studies in 1984 and 1985 which complemented its ranch studies. Contacts were also made during this period by the Commission with the Indian Health Service to plan and implement New Lands water development. At the August 1985 monthly Commission meeting a report was presented about the availability of water on the New Lands.

A number of questions from concerned citizens disputed the report, and the Commission's belief that there was sufficient water of acceptable quantity and quality. Concern was also expressed that the Rio Puerco was contaminated because of uranium mine dewatering and a 1979 uranium tailings pond spill near Church Rock, New Mexico. (The dewatering first occurred from 1950 to 1962. It began again in 1967 and continued until February 1986.) Similar concerns were voiced at the September 1985 monthly Commission meeting.

In mid-September 1985 Dr. Larry D. Agenbroad (a professor of geology at Northern Arizona University who had conducted a number of hydrogeology analyses for ONLD, CH2M Hill, and the Commission) provided the Commission with additional information about the Rio Puerco, supplementing his earlier report to ONLD on the hydrogeology of the Spurlock Ranch. Dr. Agenbroad concluded:

> The alluvial acquifer and surface water can be eliminated from consideration with respect to the quantity and quality of water available on the Spurlock Ranch, for the proposed settlement plans, because:
>
> a) There is more than sufficient quantity and quality ground water from the Sonsela Sandstone Member of the Chinle Formation and the Bidahochi Formation, and the alluvium of the SE tributary wash that drains the ranch, entering the Rio Puerco in the vicinity of Navajo. This alluvial unit is not hydrologically

connected to the Rio Puerco alluvium except at the point of juncture (effluent end).

b) The Sonsela Sandstone is insulated by the Chinle shale (clay) above, and below -- preventing surface water from recharging this unit. More importantly, the Sonsela Sandstone water is artesian pressure (hydraulic head) which originates due to its up-gradient (toward the New Mexico state line) rise away from the Rio Puerco. It would not be possible for gravity infiltration to penetrate an aquifer under artesian head.

c) The Bidahochi Formation water is topographically higher than the Rio Puerco and its alluvium and is not connected to it hydraulically -- except as effluent from the Bidahochi.

d) The alluvial water in the vicinity of the SE wash on the Spurlock Ranch is topographically higher than the Rio Puerco alluvium and is hydrologically connected only as effluent from the wash.

e) Of the wells drilled on the Spurlock Ranch (Table 5, pp. 26-27; Agenbroad, 1985) only 5 are in the Rio Puerco Alluvium (see Plate III, map pocket). Of these five wells only three are included in land acquired by the Navajo Tribe.

f) There is approximately 5-6 miles of river bank frontage on that portion of Spurlock Ranch property being purchased for the Navajo Nation. This is primarily the south bank of the river in a 5-6 mile NE-SW diagonal in T20N, R27E. Assuming the alluvium extends .5-1 mile south of the channel, as an average figure, if this land were fenced from access to the alluvium, or the river, it would result in an estimated loss of less than 6 square miles of the original property. People and livestock could be excluded from access to the river or the alluvium and alluvial water and still have sufficient high quality water and land for resettlement.

g) The Rio Puerco problem for the Spurlock Ranch is no greater than for the Chambers Ranch, which the Navajo Nation already manages (Agenbroad, Letter to the Commission, p. 2).

Dr. Agenbroad followed this letter report with an October 1985 report on water availability at three potential 300 family community development sites on the New Lands. The report focused on three tasks. First, it identified

three sites where it would be possible to develop a 75 gpm well field, which would draw its water from sources other than the Rio Puerco alluvial aquifer. Second, the report discussed the water quality of the hypothetical well fields, and concluded that it would be within acceptable limits of the standards for public drinking water. Third, the report presented a diagram of the ground water system for the Spurlock, Wallace, and Roberts Ranches, which demonstrated that the deep well water table cannot be contaminated from the Rio Puerco alluvium because of the ranches' up-gradient location, intervening nonpermeable formation, and hydraulic pressure. While the purpose of this work was to identify water supplies not hydrologically associated with the Rio Puerco, Dr. Agenbroad none the less observed:

> The conclusion that must be drawn based on the available information (Weimer et al. 1981; Arizona Department of Health Services, 1983; Ruttenberger et al. 1984; Caldwell, 1985) is that there is little evidence of radioactive contamination of the Rio Puerco alluvial water in the vicinity of the Spurlock Ranch. The conclusions of the Ruttenberger et al. (1984) paper indicates no exposure limits were exceeded by the tailings spill, nor the mine effluent.
>
> Regardless of the quality of the water in the Rio Puerco alluvium, the ranches are well watered, with high quality water, from sources which are not in hydrologic connection with Rio Puerco alluvium (except as effluent from the sources) (Agenbroad, Non-alluvial Water Quantity..., p. 5).

On September 23, 1985, the Commission retained Western Technologies, Inc. to gather and test samples of water taken from the New Lands and neighboring on- and off-reservation communities. Water from 13 wells and springs, nine of which are on or immediately adjacent to the New Lands, was tested for radioactive contamination and compliance with federal and state Safe Drinking Water Standards. Upon completion of the tests in mid-October 1985 Western Technologies reported its findings to the Commission. Discussing the nine wells and springs on and/or near the New Lands, the report's Executive Summary stated:

> The ground water quality investigation conducted in the vicinity of the Puerco River from Lupton to Adamana revealed the following:
>
> 1. Water from nine wells and springs sampled in the study area exhibited good quality with some evidence of elevated hardness and increased total dissolved solids.
>
> 2. No ground water contamination due to radiochemicals from the uranium tailings spill of six years ago was evident.

> Information was gathered from the files of the Arizona Department of Health Services which indicated the issue of radiochemical contamination of the Puerco River was not a new one, with investigations being conducted prior to the spill. Further, data from well analyses performed after the spill showed some increases in radiochemical levels but that with time and continued monitoring, levels decreased to well within established maximum contaminant standards. Finally, a paper prepared by staff of the Arizona Department of Health Services concluded that a well in the area, which was monitored monthly appeared to be unaffected by the spill and that although impacts of the spill appear to have been attenuated by clean-up actions and natural processes, ground water contamination is not fully understood in the area (Western Technologies, Inc. Water Quality and Investigation..., p.i).

Western Technologies' report and Dr. Agenbroad's September and October reports were sent on November 6, 1985 to the Arizona Department of Health Services' for a peer review. On February 26, 1986 and March 13, 1986 ADHS advised the Commission that its review confirmed the consultants' findings about the potability of water at the proposed relocation sites (Arizona Department of Health Services, Office of Emergency Response and Environmental Analysis, Interoffice Memorandum...January 14, 1986).

At the March 1986 monthly Commission meeting Michael A. Brown, a concerned citizen, presented the Commission with a report reflecting his review of the Commission's analyses of New Lands' water quality. He was highly critical of the manner in which water quality was studied and the conclusions reached by the Commission's consultants. He labeled Western Technologies' finding that 'no ground water contamination due to radiochemicals from the uranium tailings spill of six years ago was evident' a "facile conclusion" (Brown, An Analysis of..., p. 4). Mr. Brown's report was forwarded on April 1, 1986 to the Arizona Department of Health Services for review.

On June 10, 1986, the Commission received ADHS's review of Mr. Brown's report. The review comments were limited to the water quality issues raised by Mr. Brown. While the review was relatively inarticulate, its Conclusion and Recommendation stated:

> (a) Additional water quality monitoring for both surface and ground waters needs to be conducted in the proposed relocation area.
>
> (b) Sufficient quantity and quality ground water appears to be present in the proposed relocation area without using surface water from the Puerco River or ground water from Puerco River alluvium (Arizona Department of Health Services, Office of Emergency Response and Environmental Analysis, Comments on Water Quality Issues Presented by Michael A. Brown, p. 3).

A copy of the Arizona Department of Health Services April 1986 report Water Quality Study -- Puerco River, Arizona, 1985 accompanied the review of Mr. Brown's report. The letter from William C. Blackman, Jr., Manager of the Office of Emergency Response and Environmental Analysis, that transmitted the review of Mr. Brown's report and this report to the Commission stated:

> Ground water quality in the Rio Puerco basin area varies considerably as detailed in the USGS Water Resources investigation 77-5 open file report (1977) and as discussed by Agenbroad (1985) in his report on the Hydrogeology of the Wallace Ranch. Details of these variations are identified in the attached technical comments. In addition, a water quality study conducted by my staff in 1985 identifies several surface water quality violations for Radium 226 and heavy metals in the Rio Puerco. However, it appears that sufficient water of potable quality can be developed from aquifers underlying the proposed relocation area without utilizing water from the Rio Puerco or the Rio Puerco alluvium. Additional sampling should be conducted, however, to verify this fact (Arizona Department of Health Services, Office of Emergency Response and Environmental Analysis, Letter from William C. Blackman, Jr...).

US GEOLOGICAL SURVEY'S RECONNAISSANCE STUDY

Beginning in September 1985 the Commission explored the need for a definitive assessment of the Rio Puerco and New Lands with other agencies. Late that month, a Commission consultant discussed having the Bureau of Indian Affairs' Navajo Partitioned Lands Office ask the Flagstaff Office of the US Geological Survey's Water Resources Division to review Dr. Agenbroad's conclusion that alluvial water from the Rio Puerco will not move into the non-alluvial aquifers which will be used as the source of New Lands water. On November 21 and 22, 1985 a series of meetings were held with representatives of the Navajo Partitioned Lands Office. A representative of the Flagstaff Office of USGS attended the session on water, and it was agreed that the Memorandum of Understanding between the BIA and USGS would be amended to provide for hydrologic assessments of the New Lands. The consultant's report stated:

> USGS will make a statement on possible contamination of non-alluvial aquifers on the New Lands. Their initial reaction seems to be that only minor movement of water into some of these aquifers may occur and that the Sonsela formation would be protected by hydrostatic pressure until the pressure is lessened by pumping. Impervious strata of the Chinle formation would also protect this aquifers, except where faults or joints (cracks) are present. Any water movement into the sandstone aquifer would be extremely slow (NHIRC, Meetings with NPL Office..., p. 1).

On March 20, 1986 the Flagstaff Office of USGS sent a Rio Puerco Study work plan, with cost estimates, to the Navajo Partitioned Lands Office.

On May 19, 1986 the Commission received a copy of a report prepared by the Southwest Research and Information Center which questioned the quality of water in the Rio Puerco. As recounted in the May 14, 1986 Arizona Republic, p.B2, the Center's tests showed a level of uranium particles in excess of three times the standards set by the Arizona Department of Health Services.

On June 5, 1986 the Commission asked its Indian Health Service liaison to review the Southwest Research and Information Center's report. This report and the April 1986 Arizona Department of Health Services report about the Rio Puerco lead to a telephone inquiry, from the Commission, on June 19, 1986 to Region IX Environmental Protection Agency about that agency testing water quality on the New Lands. The EPA representative suggested a series of baseline sampling tests similar to what EPA does at community sites for the Indian Health Service. An interagency meeting was scheduled for the following month in Flagstaff. On July 15, 1986 Commission staff met with representatives from the Environmental Protection Agency, US Geological Survey, Indian Health Service, Bureau of Indian Affairs, and the Navajo Tribe. It was decided that USGS would send a proposal to the Commission for a Rio Puerco reconnaissance water quality study. The proposal was received on September 25, 1986 from the Tucson Office of USGS's Water Resources Division. On November 10, 1986 the Commissioners met with USGS water scientists and agreed to support this work.

The goal of the reconnaissance study was to assess the potential contamination of ground water by radionuclides and trace elements in the alluvial aquifer of the Rio Puerco near Chambers and Sanders. Vegetation growing in the flood plain would be sampled to assess the potential for radionuclides entering the human food chain through consumption by grazing animals. Results of earlier studies would also be reviewed. In mid-December 1985 the Tucson Office reported that its field work was completed, and that the samples were being sent to laboratories for analysis.

On February 10, 1987 Commissioner Sandra L. Massetto and staff met in Tucson with representatives of USGS for a briefing on their progress -- the project was on schedule and USGS anticipated completing a draft report by April 1, 1987. The report would review historical data on radiation and water quality in the Rio Puerco, specify the results of the laboratory analyses, state the degree of contamination found, and point out any data deficiencies. It was initially proposed that the report would not specify the degree to which there are health hazards, because such a statement would involve medical assessments not customarily made by USGS. To obtain this information, it was decided that the draft report would be sent to the Environmental Protection Agency for its review. Following EPA's review, and a concurrent peer review by USGS staff who were not involved in the study, the report would be distributed to the public.

On March 26, 1987 Commissioner Sandra L. Massetto and staff met in Tucson with USGS representatives and Dan Jackson of the Department of the Interior Field Solicitor's Office. USGS was preparing its report on the reconnaissance study, and assembling information for presentation at the Congressional hearings on the Fiscal 1988 appropriations for the relocation program,

which were scheduled for the next week in Washington, D.C. The information on USGS's report and EPA's health risk assessment presented at this briefing was subsequently issued in separate reports.

REPORT ON THE US GEOLOGICAL SURVEY'S RECONNAISSANCE STUDY

On March 30, 1987 the Geological Survey released USGS Open-File Report 87-206: Distribution of Radionuclide and Trace Elements in Groundwater, Grasses, and Surficial Sediments Associated with the Alluvial Aquifer along the Puerco River, Northeastern Arizona -- A Reconnaissance Sampling Program. This report focused on the levels of radionuclides and did not recount the health risk findings -- which were presented in the USGS's interpretive report. The reconnaissance study's Abstract stated:

> Ground water, perennial grass, and sediments were sampled for trace elements and (or) radionuclides in the Puerco River basin in northeastern Arizona. The concentrations of gross alpha radioactivity minus uranium exceeds 15 pCi/L in 5 of 14 wells sampled. The concentration of radium-226 plus radium-228 exceeds the primary water-quality standard of 5 pCi/L in one well. The concentration of uranium exceeds a recommended limit of 0.035 mg/L in two wells. Perennial grass and sediment samples have low concentrations of radionuclides. The concentration of trace elements in the sediment samples was not unusual. Water quality of surface water in the Puerco River at Chambers varied as a function of the suspended-sediment concentration. Concentrations of total gross alpha have fluctuated from 12 to 11,200 pCi/L. Concentrations of total gross beta fluctuated from 45 to 4,500 pCi/L. (USGS, Open-File Report 87-206, p.1)

Open File Report 87-206 March 1987 was subsequently superseded by the same report dated July 1987. Table 7 in the July report contains information on thorium 232 and total uranium not included in Table 7 in the March report. Many of the values in Table 7 in the later report differ from those in Table 7 in the earlier report. Also, Figures 10 through 14, which show the historic levels of selected chemical constituents at the sample sites, have more information in the July report. These differences appear to be a matter of detail rather than substance, because the Abstract and the Summary in both documents are the same.

EPA'S HEALTH RISK ASSESSMENT

The first reporting of EPA's findings was contained in a March 27, 1987 letter from Robert D. Mac Nish, District Chief of USGS's Water Resources Division, Tucson Office, to Assistant Secretary Swimmer. In his letter, Mr. Mac Nish conveyed information from David L. Duncan, EPA Regional Radiation Representative for Region IX. EPA's health risk assessment of each of 11 wells was followed by a general narrative assessment -- and three paragraphs from the narrative seem to capture the essence of Mr. Duncan's views.

> Mr. Duncan did not comment on the remaining wells, for which the analytical results were lower in radionuclide concentration than those where health risk was evaluated as slight or insignificant.
>
> Mr. Duncan's general observations were that even at the wells where a primary standard or a potential primary standard are exceeded, the amount of exceedance is slight, and the health risks are likewise slight or insignificant. Prolonged consumption of the water from wells where these standards are exceeded may require more caution, such as considering an ion exchange system, for public supplies, and using bottled water for drinking in domestic supplies.
>
> In the final analysis the presence of radionuclides in the alluvium of the Puerco River is rather widespread, but the severity of contamination does not seem to be particularly high anywhere. Data collection and analyses of water samples from shallow wells drilled in the alluvium and sampling those wells over time will better define the areas of the plume where caution must be exercised in consuming the water. This will also provide the information that would permit the design of a water supply system that could safely obtain water from this important aquifer (USGS, Letter from Robert D. Mac Nish..., p. 2).

The second reporting of EPA's findings was presented at the hearings on the Fiscal 1988 appropriations for the relocation program. As recounted in the Commission's May and June 1987 Monthly Report:

> There is not sufficient contamination in any of the water well samples to constitute a large health risk. The samples which did show positive have an amount of contamination in the lower range of what EPA anticipates will be its primary standard; therefore, the health risk is considered to be slight or not significant.
>
> Roughly one-third of the wells do not require further monitoring.
>
> Roughly one-third of the wells have contamination at levels that call for quarterly monitoring.
>
> Roughly one-third of the wells have contamination at levels that are above the anticipated EPA primary standard, but not at levels high enough to constitute a large health risk. Prolonged consumption of water from these wells by the same persons may require more caution, such as finding alternative water supplies or installing treatment equipment (NHIRC, May and June 1987 Monthly Program Update and Report, p. 1-2).

NEW LANDS WATER DEVELOPMENT

The impact of these findings on the Commission's relocation program was also stated at the hearings and recounted in the May and June 1987 Monthly Report:

> As the Commission reported at its Washington hearings, its work on the New Lands will be guided by USGS's study and EPA's findings. It will continue with its initial plans to not use Rio Puerco water for New Lands development. These plans call for supporting New Lands development with water from bedrock acquifers that are distant enough from the Rio Puerco so that river water is not drawn to the wells. In addition, the Commission will, to the extent that its resources permit, insure that water well monitoring programs are undertaken and that alternatives are found for the wells where contamination is above the anticipated EPA primary-standard (NHIRC, May and June 1987 Monthly Program Update and Report, p.2).

The general approach being taken by the Commission to water development at the New Lands' relocation sites consists of the following elements:

- °New Lands water development will use deep well acquifers because this source can provide sufficient good water for relocatees' housing and agrigrazing uses.
- °Water quality tests are conducted well in advance of development activities at the relocation sites where interim systems will be developed to supply domestic water in advance of the Indian Health Service's regional water system.
- °Families will not occupy relocation sites until water has been developed.
- °No water from the Rio Puerco will be used on the New Lands.

US GEOLOGICAL SURVEY'S INTERPRETIVE REPORT

In June 1987 USGS issued Water Resources Investigation Report 87-4126: Preliminary Assessment of Water Quality in the Alluvial Aquifer of the Puerco River Basin, Northeastern Arizona.

This report differed from Open File Report 87-206 in that the Open File Report addressed the amount of radiation discovered in the samples gathered in December 1986, while Water Resources Investigation Report 87-4126 contained USGS's interpretation of what the discovered amount of radiation meant in terms of the quality of ground water. EPA's formal assessment of the health risks posed by the discovered amount of radiation was also included in the Water Resources Investigation Report.

The Executive Summary in this report begins:

> Ground water in the alluvial acquifer of the Puerco River basin may not be safe for human consumption because of historic radionuclide and trace-element releases associated with uranium mining (USGS, Water Resources Investigation Report 87-4126, p. 5).

This could be construed ominously except that the Executive Summary then cites among its major findings about the sampled water:

> Activities of radionuclides are variable but generally low (gross alpha minus uranium and radon generally less than 15 picocuries per liter and radium-226 and radium-228 generally less than 5 picocuries per liter). Radionuclides in the water generally are below the maximum contaminant levels of the U.S. Environmental Protection Agency and the State of Arizona. Concentrations of trace-elements are low (generally less than U.S. Environmental Protection Agency and Arizona maximum contaminant levels) (USGS, Water Resources Investigations Report 87-4126, p. 5).

Further, in the Suggestions for Additional Studies, it is stated:

> Quality of water in existing wells has only a slight health risk (see Part III. Health Risk Assessment), but monitoring of radionuclides on a quarterly or annual basis is desirable (New Mexico Environmental Improvement Division, 1982) (USGS, Water Resources Investigations Report 87-4126, p. 46).

The EPA health risk assessment presented in the Water Resources Investigation Report is more technical, and considerably less articulate, than that communicated in Mr. Mac Nish's letter to Assistant Secretary Swimmer. Nonetheless, nothing stated in the assessment in Water Resources Investigation Report 87-4126 bespeaks any revisions to the health risk assessment communicated in Mr. Mac Nish's letter.

USGS'S PROPOSAL FOR A RIVER BASINS STUDY

On October 29, 1987 the Commission received a preliminary proposal from USGS for a project that is a consequence of its Rio Puerco reconnaissance study. Entitled Occurrence and Movement of Radionuclides and Other Trace Elements in the Puerco and Lower Little Colorado River Basins, Arizona and New Mexico, the proposed 5 year $2,844,000 project is a major effort to evaluate naturally occurring and man-induced occurrences of hazardous elements in 318 miles of Puerco and Little Colorado stream-acquifer systems.

While the Commission did not evaluate the proposal from a technical standpoint, it did advise USGS on November 10, 1987 that the project should include a health risk assessment, and that such information should be presented in a manner easily understood by all involved. The Commission will

cooperate with USGS's proposed project, and the extent of its financial participation will be based on the potential contribution the study will make to the relocation program. The value of such a contribution must be assessed with respect to the studies reviewed herein, as they provide sufficient confirmation and guidance to proceed with the planned development of the New Lands. Fiscal considerations will also play a role in determining the Commission's financial participation.

CONCLUSION

In its October 1987 proposal USGS stated:

> The magnitude and extent of radionuclide and other trace element contamination in the Little Colorado River basin is unknown" (USGS, Project Proposal..., p. 1), and that "The extent and variability of radionuclides and other trace elements in the region is unknown. More importantly, no reliable means for assessing future changes in potable water supplies is available. Information is needed on the occurrence and movement of contaminants in surface and ground water to enable reliable estimates of potential contamination and to provide a basis for comprehensive water-resource planning and development in these basins (USGS, Project Proposal..., p. 3).

These assertions were also made at the interagency meeting which USGS convened in Phoenix on January 21, 1988. As articulated by Commission staff at that time, if the proposed project is to be meaningful to the relocation program it should:

- °Involve EPA and include a health risk assessment as a project objective.

- °Examine the potential for water from the Rio Puerco entering the aquifiers which supply the New Lands deep wells.

Most, if not all, of the studies reviewed herein include a statement about the need for more information. As important as this need is, it does not seem to have prevented the Arizona Department of Health Services, EPA, and USGS from performing their analyses. Moreover, these agencies' findings did not call for halting relocation development on the New Lands because of problems with water quality in the Rio Puerco. In view of this, the proposed project's contribution to the relocation program can best be made by the suggested up-dated health risk assessment and examination of the relationships between the aquifers -- because such information has the potential to help the Commission better focus its planning and sharpen the effectiveness of its programming.

The studies and associated documents reviewed and mentioned herein are identified in the attached listing of selected major references.

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Selected Major References Regarding Water Quality
On The New Lands And The Rio Puerco

January 20, 1988

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U.S. GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
ARIZONA DISTRICT

PROJECT PROPOSAL

OCCURRENCE AND MOVEMENT OF RADIONUCLIDES AND OTHER TRACE ELEMENTS IN THE PUERCO AND LOWER LITTLE COLORADO RIVER BASINS, ARIZONA AND NEW MEXICO

A Study of Contamination of Surface Water and Ground Water in East-Central Arizona and Western New Mexico

October 1987

PROJECT PROPOSAL

OCCURRENCE AND MOVEMENT OF RADIONUCLIDES AND OTHER TRACE ELEMENTS IN THE PUERCO AND LOWER LITTLE COLORADO RIVER BASINS, ARIZONA AND NEW MEXICO

PROBLEM

The magnitude and extent of radionuclide and other trace element contamination in the Little Colorado River basin is unknown.

Man's activities in the Little Colorado River basin (fig. 1) have resulted in releases of radionuclides and other hazardous trace elements to the surface water and nearby ground water of the Puerco and Little Colorado Rivers. Releases of mine wastes, in addition to the presence of naturally occurring hazardous trace elements, have made some water resources unsafe for use. According to the Arizona Department of Health Services (Tom Bradbeer, written commun., 1983), "The surface water in the Puerco River and Little Colorado River below the Puerco River is radioactive and may be dangerous." Webb and others (1987b) indicate that a contaminant plume may exist in the alluvial aquifer along the Puerco River.

Area residents and relocatees from the Hopi partitioned land are concerned about potential hazards to humans, livestock, and wild animals that use surface water or ground water from the near-channel alluvial aquifer. These hazards may result from the direct contamination of surface water by mine and mill discharge; contamination of ground water by recharge of contaminated surface water; and contamination of surface water by seepage of contaminated ground water.

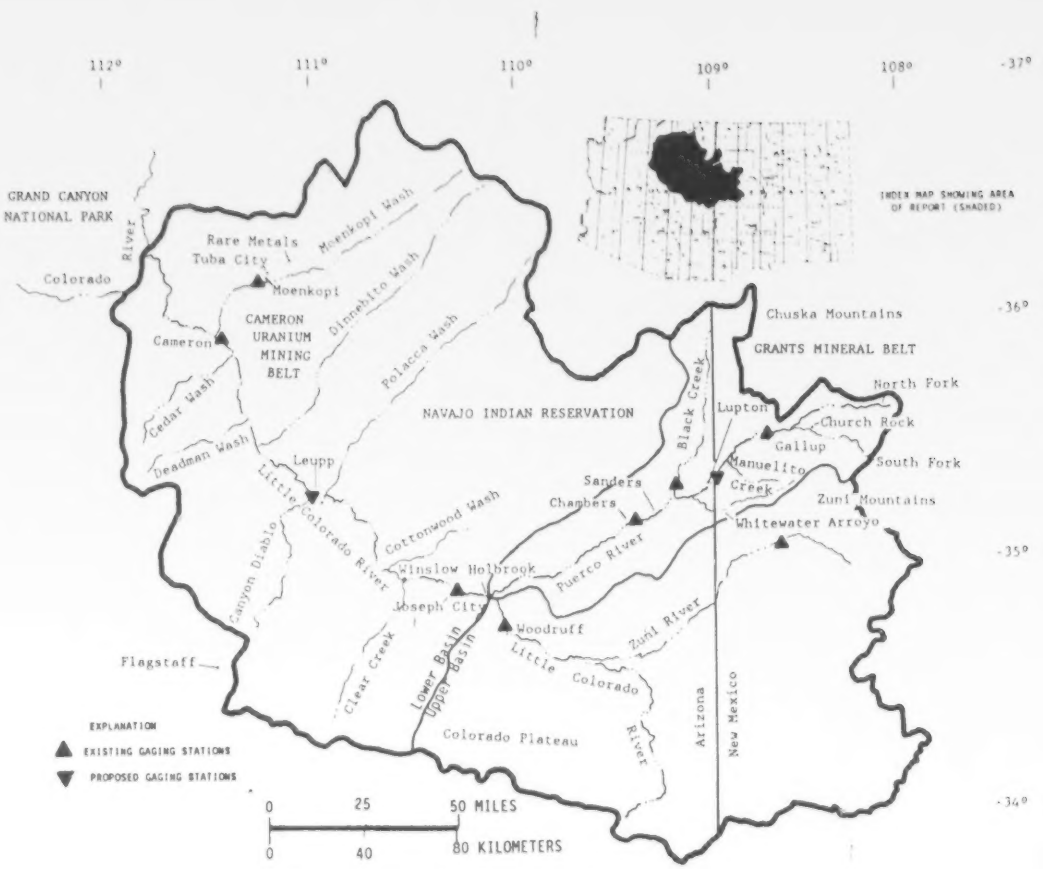

Figure 1.-- Map of Little Colorado River basin.

The extent and variability of radionuclides and other trace elements in the region is unknown. More importantly, no reliable means for assessing future changes in potable water supplies is available. Information is needed on the occurrence and movement of contaminants in surface and ground water to enable reliable estimates of potential contamination and to provide a basis for comprehensive water-resource planning and development in these basins.

Naturally occurring contamination is compounded by releases from mining activities.

Uranium mining in two regions of the southern Colorado Plateau--the Grants Mineral Belt of New Mexico and the Cameron Uranium Mining Belt of Arizona--has resulted in increased releases of radionuclides and other hazardous trace elements in the Puerco River and lower Little Colorado River basins (fig. 1). The single largest spill of uranium tailings liquid in United States history occurred in 1979 at the United Nuclear Corporation mill in the headwaters of the Puerco River near Church Rock, New Mexico (fig. 2) (Shuey, 1982). Additionally, mine dewatering discharges containing radionuclides and other trace elements created perennial flow in the otherwise ephemeral Puerco River to Chambers, Arizona, in the late 1950's and between 1969 and 1986. Contamination of surface water and ground water in the alluvial aquifer has been verified in several studies (Gallaher and Cary, 1986; Shuey, 1982, 1986; Arizona Department of Health Services, 1986a; Webb and others, 1987a and b). Weimer and others (1981) documented contamination in sediments.

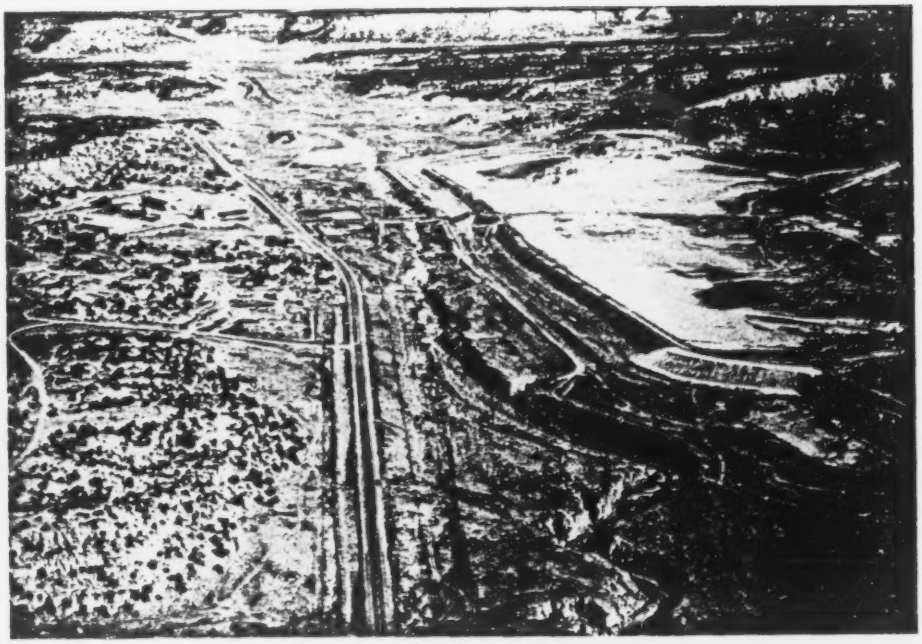

Figure 2.--The Church Rock mill was the site of the largest accidental release of uranium tailings liquid in United States history. In July 1979, approximately 94 million gallons of liquid and more than 1,100 tons of tailings were released into the Puerco River. The total activity of gross alpha inthe Puerco River on the day of the spill was as much as 130,000 picocuries per liter. Recommended limits of gross alpha in surface water in Arizona is 30 picocuries per liter.

Mining has also resulted in contamination of surface water and ground water near Cameron, Arizona. Uranium was mined from 98 sites between 1950 and 1962. No measures for stabilization of abandoned mines were implemented. Pits are open and some are filled with water. Samples of water from springs, wells, impoundments, abandoned pits and Little Colorado River contained high concentrations of uranium, radium-226, lead, and chromium (Don Payne, Navajo Nation, written commun., 1986).

OBJECTIVES

The U.S. Geological Survey proposes to study the occurrence of radionuclides and other trace elements and their mechansims of movement in the Puerco River and lower Little Colorado River basins. The study has three objectives:

1. To determine types, concentrations, spatial variability, and recent origins of radionuclides and other trace elements in surface water, fluvial sediments, and ground water in and near the Puerco and lower Little Colorado Rivers.
2. To quantify transport rates of selected radionuclides and other trace elements in surface water from Gallup, New Mexico, to the Colorado River near Grand Canyon, Arizona.
3. To estimate the amount and extent of contaminant movement between surface and ground waters.

BENEFITS

Both resource-evaluation and scientific benefits will result from a process-oriented study of contaminant transport.

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This study will evaluate the presence and potential for contamination in the Puerco River and lower Little Colorado River basins. As a resource evaluation, the following benefits will be realized:

- Quality of surface and ground water in the alluvial aquifer will be intensely monitored over a five-year period. Emphasis will be on new areas of contamination, areas where contamination is greatest, and areas where impacts of contamination would be the greatest.
- Identification of sources, extent, and movement of contaminants is the first step in development of technically sound remedial measures or the development of alternate sources of water.
- Evaluation of contaminant movement in surface water will aid in reliable estimates of future trends in contamination.
- Evaluation of baseline data will aid in determination of environmental threats to endangered species, such as the humpback chub near the mouth of the Little Colorado River.
- Measurement of contaminant volumes in the Little Colorado River will provide accurate data on the amount of sediment and contaminants entering the Colorado River in Grand Canyon National Park.

Results from this endeavor will also have scientific benefits, including a better understanding of:

- Transport mechanisms of radionuclides and other trace elements in ephemeral streams.
- Movement of contaminants between surface water and ground water.
- Sediment-transport rates in ephemeral streams.

BACKGROUND

Hydrologic and geologic setting.

The combined length of the Puerco River and Little Colorado River below the Puerco River (lower Little Colorado River) extends about 318 mi across the southern part of the Colorado Plateau from the Chuska and Zuni Mountains in New Mexico to the Colorado River in Arizona (fig. 1). The rivers flow past Gallup, New Mexico, and Holbrook and Winslow, Arizona; Petrified Forest and Wupatki National Monuments; and the Navajo Indian Reservation. The Little Colorado River joins the Colorado River in Grand Canyon National Park, Arizona.

The Puerco River and Little Colorado River are primarily ephemeral streams (fig. 3). Runoff, most of which results from summer thunderstorms or spring snowmelt, recharges the alluvial aquifer beneath and adjacent to the channels. The alluvial aquifer is the principal water supply for domestic, municipal and agricultural uses near the rivers.

The drainage basins are geologically complex and the regional stratigraphic sequence of sedimentary rocks is structurally deformed. This deformation and subsequent erosion has resulted in the local exposure or near-surface occurrence of uranium-bearing strata (Hackman and Olson, 1977). Major uranium deposits occur in the Westwater Canyon Member of the Jurassic Morrison Formation east of Gallup, New Mexico. Radionuclides also occur in the Petrified Forest Member of the Chinle Formation, which has economically viable concentrations of uranium near Cameron (fig. 1).

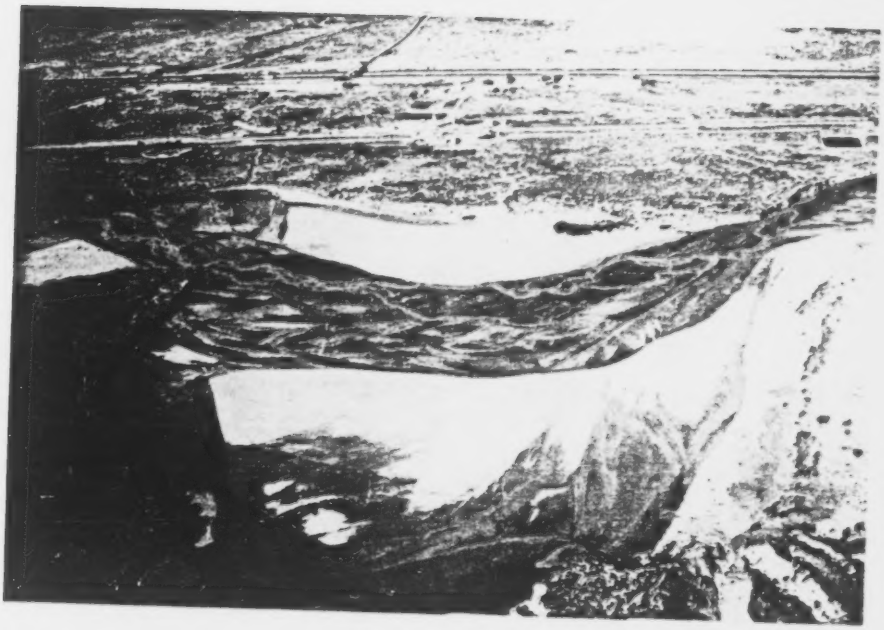


Figure 3.--The Puerco River is an ephemeral stream in northwestern New Mexico that has been contaminated by radionuclides and other trace elements. The contaminants are mostly sorbed in channel sediments.

Uranium mining in the Little Colorado River basin began in the 1950's and was concentrated near the headwaters of the Puerco River northeast of Gallup in New Mexico (Grants Mineral Belt, fig. 1), and within 50 miles southeast of the Grand Canyon (Cameron Uranium Mining Belt). Mills for processing the uranium ore were operated near both mining areas.

Contamination in the Puerco River basin.

Discharge from mine dewatering upstream from Gallup created perennial flow in the otherwise ephemeral channel of the Puerco River near Gallup, New Mexico to Chambers, Arizona, from the late 1950's to the early 1960's, and again when the mines were in operation from 1969 to 1986. Permits under the National Pollutant Discharge Elimination System (NPDES) were required when the mines reopened in 1969 in an attempt to control the level of radioactive material in effluent water. The activity of radium-226 allowed under NPDES was 10 picocuries per liter (pCi/L), or twice the present EPA maximum contaminant level (MCL). At least 63 violations of NPDES permits from mine dewatering occurred between 1980 and 1983 alone (Shuey, 1982). The temporal relation of gross alpha and gross beta activities measured at the Puerco River at Chambers is shown in figure 4.

Additional discharges of radionuclides to the Puerco River occurred after a tailings-pond dam failed at the United Nuclear Corporation's Church Rock Mill on July 16, 1979 (fig. 2) (Millard and others, 1984; Shuey, 1982; Weimer and others, 1981). An estimated 1,100 tons of tailings and 94,000,000 gallons of liquid were discharged to the Puerco River. On the day of the spill, total radionuclide activities in

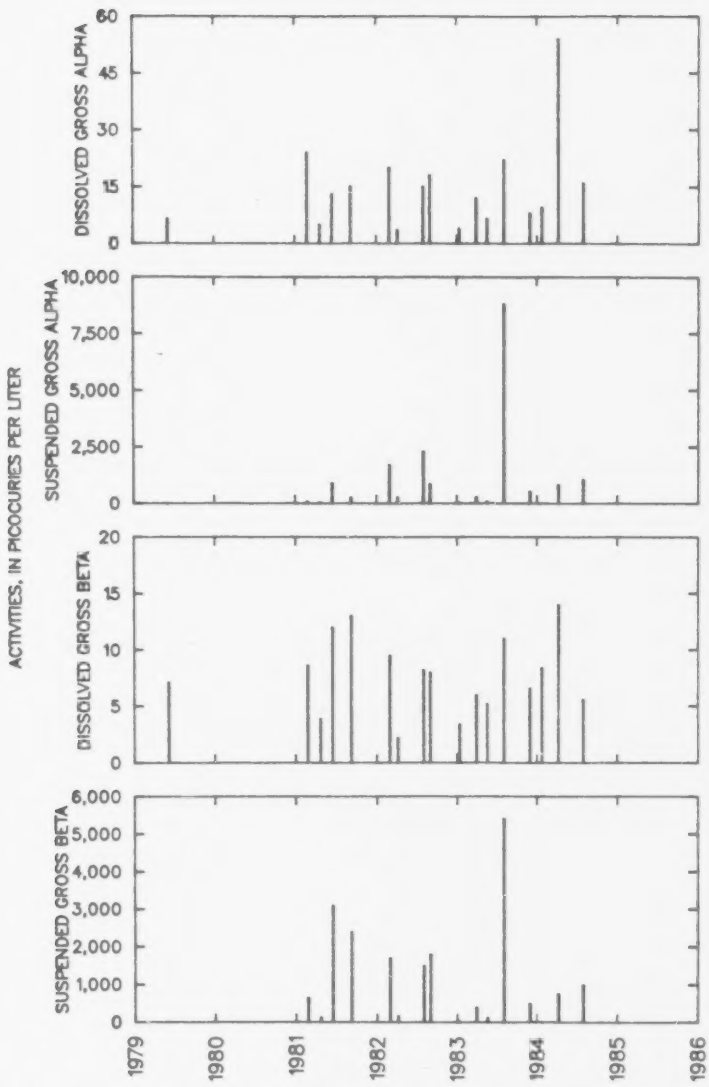


Figure 4.--Gross alpha and gross beta activities in the Puerco River at Chambers, Arizona. Arizona maximum allowable limits are 15 picocuries per liter of gross alpha minus uranium and 30 picocuries per liter of gross alpha plus gross beta. The gross alpha activities are not corrected for uranium activity.

the Puerco River at sites in New Mexico were 6,910 pCi/L of uranium, 12,000 pCi/L of thorium-230, 1.0 pCi/L of radium-226, 260 pCi/L of lead-210, and 38 pCi/L of polonium-210 (Millard and others, 1984). The maximum gross alpha activity in the Puerco River was 130,000 pCi/L near the Church Rock Mill and 26,000 to 40,000 pCi/L downstream at Gallup (Shuey, 1982). During a flood 7 years later, gross alpha activities of 1,700 to 2,200 pCi/L were measured in the Puerco River at Lupton, Arizona (Shuey, 1986).

Trace-element concentrations also exceeded maximum allowable limits of the State of Arizona (MALS) for surface water in 11 samples collected in 1985 and 1986 (Arizona Department of Health Services, 1986a). Concentrations of total arsenic, copper, manganese, lead, and dissolved selenium at five sites in Arizona were above the MALS of Arizona in samples taken in February, April, and June 1986 (ADHS, 1986a). Chris Shuey (Southwest Research and Information Center, written commun., 1987) measured concentrations of arsenic, copper, and lead that exceeded MALS of Arizona in July 1986.

Webb and others (1987a and b) evaluated the quality of water from 14 wells in the alluvial aquifer of the Puerco River basin from the State line of Arizona and New Mexico to Petrified Forest National Monument. The concentrations of gross alpha activity minus uranium equaled or exceeded the MCL of 15 pCi/L for Arizona MCL of 15 pCi/L in five of the fourteen wells. The concentration of radium-226 plus radium-228 exceeded the U.S. Environmental Protection Agency primary MCL of 5 pCi/L in one well. The concentration of uranium exceeded a State of Arizona recommended limit of 0.035 mg/L in two wells. The source of contaminants was unknown. Samples of channel sediments and grasses growing near the channel indicated no unusual activities of radionuclides in 1986 (Webb and others, 1987a).

Contamination near the Little Colorado River near Cameron, Arizona.

The Cameron Uranium Mining Belt is in the western part of the Navajo Indian Reservation. Most mining occurred within a curved belt approximately 2 miles wide extending 6 miles north of Cameron along U.S. Highways 89 and 164, and 5 miles wide extending 18 miles southeast along the Little Colorado River (fig. 1). Mining started around 1950, reached a production peak in 1957, and ceased in 1962. A total of 289,300 tons of spoil and over 600 tons of uranium ore was extracted from 98 mining sites. Most of the ore was processed at Rare Metals near Moenkopi Wash (fig. 1) (Don Payne, Navajo Nation, written commun., 1986).

No regulations for stabilization of abandoned mines existed in 1962. As a consequence, many pits in the Cameron Uranium Mining Belt are open and have filled with water. Gross alpha activities in water samples collected from 48 locations (pits, springs, wells, impoundments, and the Little Colorado River) ranged from 24 to 9,400 pCi/L. Most gross alpha activity was attributed to radium-226 and uranium. Radium-226 activity ranged from less than 0.4 to 760 pCi/L. Uranium activity in samples collected from mining pits ranged from 24 to over 4,000 pCi/L. Additionally, elevated concentrations of chromium and lead were detected in some of the water samples (Don Payne, written commun., 1986). The temporal relation of gross alpha and gross beta activities at the Little Colorado River at Cameron are shown in figure 5.

Related to Cameron-area uranium mining is an ore-processing plant located at Rare Metals, Arizona. A mound of ground water beneath a tailings pile at the plant is contaminated with radionuclides and other trace elements. A plume of contamination may be emanating from the area of

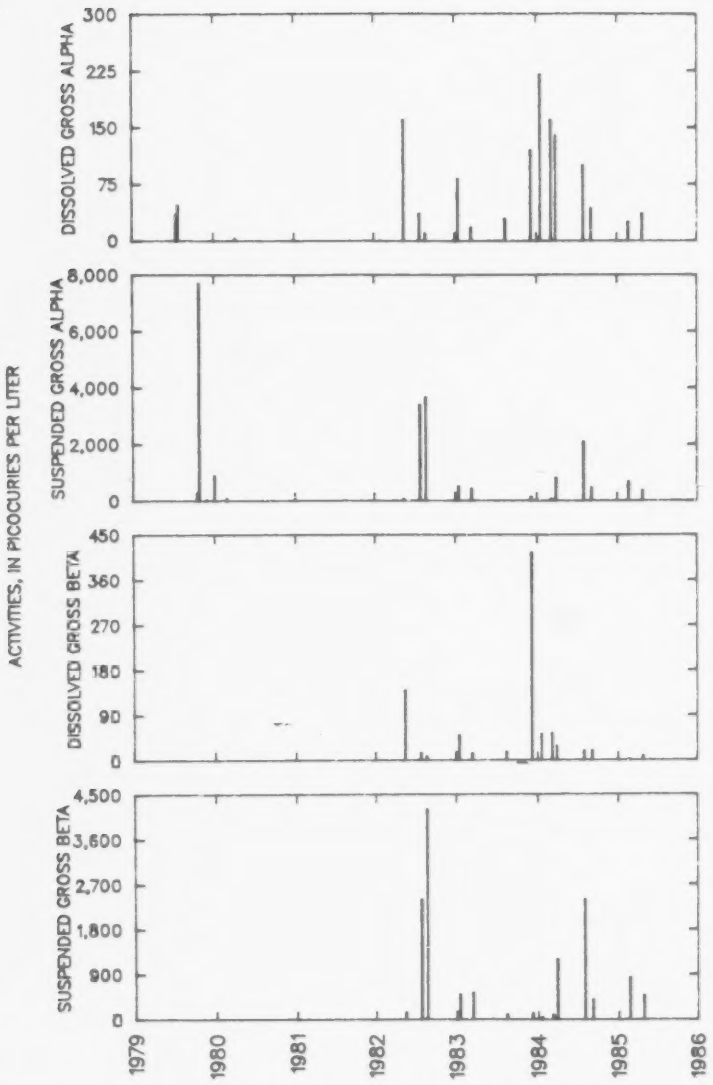


Figure 5.--Gross alpha and gross beta activities in the Little Colorado River at Cameron, Arizona. Arizona maximum allowable limits are 15 picocuries per liter of gross alpha minus uranium and 30 picocuries per liter of gross alpha plus gross beta. The gross alpha activities are not corrected for uranium activity.

the mill to Moenkopi Wash (Carol Boughton, Navajo Nation, Division of Water Resources, oral commun., 1987). The presence of unstabilized tailings near the plant allows potential erosion of contaminants into the Little Colorado River through Moenkopi Wash. Sediment discharge records for a gaging station at Moenkopi Wash near Moenkopi indicate some of the highest sediment yields per unit runoff in the United States. However, information is not available on the presence and transport rates of contaminants in Moenkopi Wash and subsequent impacts on the Little Colorado River.

The presence of uranium ores in the Grants Mineral Belt, the Cameron Uranium Mining Belt, and elsewhere in the region indicates a probable elevated background level of radionuclides. The effects of mining, superimposed on relatively high background levels of radionuclides and other trace elements, may result in immediate or long-term health hazards to humans, livestock, wildlife and vegetation that use river water or water from the alluvial aquifer. This includes the only breeding population of the humpback chub in the lower Colorado River basin. This fish species, which is protected by the Endangered Species Act, spawns in the lower 7-mile reach of the Little Colorado River (U. S. Bureau of Reclamation, 1987).

Finally, the Little Colorado River has been the single largest source of sediments to the Colorado River at Grand Canyon since 1962 when Glen Canyon Dam was built 76 mi upstream from the Little Colorado River (Julia Graf, hydrologist, U.S. Geological Survey, written commun., 1987). Sediment discharge variability has an extremely important impact on

sedimentation characteristics of the Colorado River in the Grand Canyon National Park. In particular, beach development in this reach of the Colorado River may depend on adequate sediment yield from the Little Colorado River (U.S. Bureau of Reclamation, 1987).

APPROACH

OBJECTIVE 1: Types, concentrations, spatial variability, and recent origins of radionuclides and other trace elements in surface water, fluvial sediments, and ground water in the region will be determined by monitoring.

Monitoring of surface-water quality.

The principal objective of establishing water quality monitoring sites on the mainstems of the Puerco and lower Little Colorado Rivers is to monitor concentrations of trace elements and activities of radionuclides as flow progresses downstream.

Ten surface water-quality sites will be established in the Little Colorado River basin (table 1). Seven sites are located at active surface-water gaging stations. One site, the Puerco River at Gallup, is a discontinued gaging station with the gage structure in place. Only two sites--The Puerco River at the Arizona-New Mexico State line and the Little Colorado River at Leupp, Arizona--are not presently equipped for streamflow monitoring.

Monitoring sites not on the Puerco River or on the lower Little Colorado River were selected for special purposes:

Table 1.--Proposed sites for surface-water monitoring

Location	Drainage area, in square miles	Location from mouth of Little Colorado River, in miles	Remarks
Mainstem sites			
Puerco River at:			
Gallup, New Mexico	558	279	USGS gage, discontinued.
Stateline.....	990	256	QW data collected here.
Chambers, Arizona.....	2,160	228	Active USGS gage with historic QW data.
Little Colorado River at:			
Joseph City, Arizona...	12,200	169	Active USGS gage with sediment data.
Leupp, Arizona.....	[1]17,000	104	Bridge crossings.
Cameron, Arizona.....	26,500	45	Active USGS gage with historic water quality and sediment data.
Special purpose sites			
Little Colorado River at Woodruff, Arizona...	8,100	---	Active USGS gage with historic QW data.
Moenkopi Wash, Moenkopi, Arizona.....	1,660	---	Active USGS gage with historic sediment data.
Black Creek near Houck, Arizona.....	[1]800	---	Active USGS gage with historic QW data.
Zuni River, Black Rock, New Mexico.....	810	---	Active USGS gage with historic QW data.

[1]Drainage areas are approximate (White and Garrett, 1987; Denis and others, 1986).

- Little Colorado River at Woodruff: Provide background water-quality data for flows that may serve to dilute discharges from the Puerco River.
- Moenkopi Wash at Moenkopi: Provide data on sediment transport and potential contamination downstream from an area where unstabilized mine tailings and contaminated ground water may enter Moenkopi Wash and the Little Colorado River. These data will provide estimates of sediment and contaminant loads to the Little Colorado River below the sampling site near Cameron.
- Black Creek near Houck, Arizona, and Zuni River above Black Rock, New Mexico: Compare water quality from these unmined areas to water quality of the Puerco River at Gallup or at the State line of Arizona and New Mexico. These data will also be used to characterize water quality in these two basins.

Water samples collected at the study sites will be analyzed for sediment concentrations, particle-size distribution, and both dissolved and suspended water quality. Analyses will include common ions and selected radionuclides and other trace elements. Radionuclides and indicators of radioactivity measured will include uranium-238 and -234, radium-228 and -226, radon-222, thorium-232 and -230, polonium-210 and lead-210. Gross alpha, beta, and gamma radioactivity will be analyzed to verify the activities of the totals of the individual radionuclides and to check for unexpected radionuclides. Trace element analyses will include arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, selenium, silver, strontium, vanadium, and zinc.

Quality control for chemical analyses will be maintained by splitting some samples for analysis by separate laboratories, and by submitting control samples with known chemical and (or) sediment concentrations to selected laboratories for analysis. Quality control in field operations, such as measuring and sampling techniques, and sample preparation, will be overseen by the District Quality Assurance Unit and the Project Chief.

Monitoring of fluvial sediment fractions for contaminants.

Transport of many radionuclides and other trace elements occurs mainly in suspension, either as particles or attached to fluvial sediments. At each site, several samples will be collected and separated into at least three sediment size fractions. Each fraction will be be analyzed for concentrations of selected trace elements and for gross alpha and gross beta activities. Relations between contaminant concentrations and size fractions will aid in estimating contaminant concentrations from particle-size analyses. Fewer samples and analyses will be required and will reduce the costs of operating each station.

Monitoring of bottom material for contaminants.

Water percolating through the river bed will change in quality as it recharges the alluvial aquifer. Particulate contaminants or those attached to sediments may settle on the streambed as flow recedes. Some dissolved contaminants may be sorbed by the alluvium. Alternately, sorbed contaminants may be leached by percolating water and carried by ground water.

The objective is to define vertical depositional zones for contaminants within the top 30 to 50 ft of the streambed. Starting upstream from the mined areas of the Puerco River basin, a series of cores will be extracted at up to 12 locations along the channel mainstem. Radon gas will be withdrawn from the hole at several depths to indicate sources of radium-226. Units bearing radon will be split from the core and analyzed for radium-226 and other uranium daughter products. Comparisons of cores from areas of scour and deposition will also provide a history of transport of sediments and contaminants in the rivers. Fine sediments from flood plains and backwater areas will also be collected and analyzed for contaminants to determine if these areas are acting as contaminant sinks.

Monitoring of ground water in the alluvial aquifer.

Ground-water quality and quantity in the alluvial aquifer varies over distance and time. This task will determine variability in water quality of the alluvial aquifer at selected sites along the Puerco and lower Little Colorado Rivers.

In order to collect ground-water samples for chemical analyses, two well clusters will be drilled in the alluvial aquifer near each of six mainstem water-quality sites, and near the gage at Little Colororado River at Woodruff (table 1). Additional wells, such as those monitored by the New Mexico Environmental Improvement Division at Gallup and on the North Fork Puerco River (Gallaher and Cary, 1986), and some used by Webb and others (1987b) will be used.

One cluster of wells will be drilled within about 1,000 ft from the channel. The second cluster will be drilled about 100 ft from the channel between the first well cluster and the river. Each well cluster will be comprised of three wells, drilled to approximately 50-, 100-, and 150-foot depths, depending on local geologic and hydrologic conditions.

Samples of ground water will be collected quarterly and analyzed for common ions, selected radionuclides and other trace elements. At least one sample from each well will be analyzed for a full suite of common and hazardous constituents. Water from wells with high levels of hazardous constituents will be sampled more frequently and analyzed in greater detail. Several samples will be collected concurrently with surface-water samples to evaluate changes in water quality associated with runoff.

OBJECTIVE 2: Transport rates of contaminants in surface water from Gallup, New Mexico, to the Colorado River near Grand Canyon, Arizona, will be determined from the water-quality monitoring network.

Data from each station will determine values for, (1) total suspended sediment, (2) selected sediment size fractions, (3) selected radionuclides, and (4) other selected trace elements. Mass balance relations between each constituent evaluated on the main stem will be estimated. Sources or sinks for sediment and (or) contaminants may be inferred where loads between adjacent gages show marked and consistent trends.

A network of precipitation and crest-stage gages will provide data on sources and magnitudes of runoff. Crest-stage gages will be installed near the mouths of the following streams: North Fork Puerco River; South Fork Puerco River; Manuelito Canyon; Whitewater Arroyo; Cottonwood Wash; Clear Creek; Canyon Diablo; Polacca Wash; Dinnebito Wash; Deadman Wash; Moenkopi Wash; and Cedar Wash (fig. 1). Precipitation data will also provide a means for evaluating contaminant loads with respect to average precipitation.

OBJECTIVE 3: Estimates of amounts and extent of contaminant movement between surface water and ground water will be made by monitoring surface water-ground water interactions.

Because surface water recharges the alluvial aquifer along most of the Puerco and lower Little Colorado Rivers, ground-water quality will be influenced by temporal changes in quality and quantity of streamflow. This study will describe the movement of water and chemical constituents between the river and the alluvial aquifer.

Surface water - ground water relations will be studied in detail near Chambers and Sanders, Arizona, and near the Cameron Uranium Mining Belt. Radionuclides and other trace metals have been found in surface water and ground water in both areas.

Three additional well clusters will be drilled near Chambers and Sanders, Arizona to supplement the two well clusters drilled for the monitoring network. Other wells used by Webb and others (1987b) will be included in the network to provide a three-dimensional analysis of flow characteristics in the alluvial aquifer on both sides of the channel. Well locations will be determined from an analysis of local geology and from

information on the regional-aquifer system. Sampling from wells will be done concurrently with sampling for the monitoring program. Additional samples will be collected during and following streamflow.

Ground-water samples will be analyzed for contaminants and other chemical constituents. Surface-water samples will be collected near the gage prior to, and concurrently with, samples collected from wells to provide data for evaluating the impact of surface-water quality on the local and regional aquifer systems.

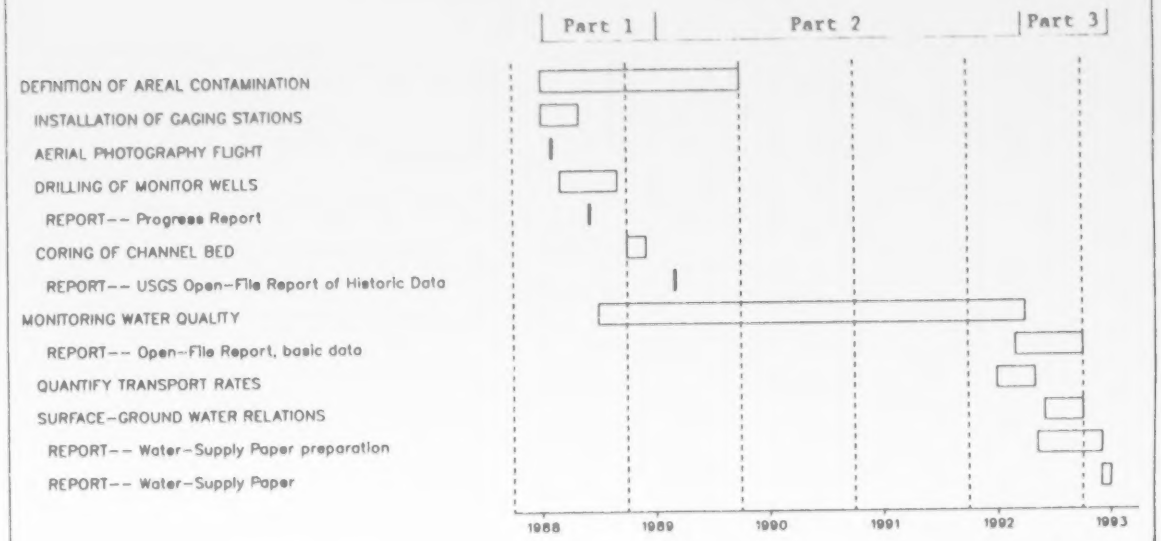
Continuous water-level recorders will be installed on several wells. Dye tracer, and (or) aquifer performance tests will be made to evaluate characteristics needed to estimate rates and directions of ground-water flow. Relations between surface-water levels and ground-water levels will be developed to estimate duration and rate of flow between the river and aquifer.

A similar approach to study will be used to estimate flow velocities and chemical characteristics of surface water and ground waters in the Cameron Uranium Mining Belt. Up to three well clusters will be drilled. The well network will be concentrated between the Little Colorado River and mine pits located to the north and east.

PROJECT SCHEDULE & REPORTS

The study will be conducted in three consecutive parts beginning in January 1988 and ending in December 1993 (fig. 6). Part 1, lasting through December 1988, will include installation of gages and wells and initial data collection and analysis. Part 2 (January 1989 to March 1992) data collection and analysis will be "streamlined" based ~~on~~ results from part 1. Part 3 will begin in April 1992. In this part, the final report

Figure 6.-- TIMETABLE FOR PUERCO AND LITTLE COLORADO RIVER PROJECT



will be completed and a design for a long-term monitoring network will be prepared. At least five formal reports will be published. They are:

1. A USGS open-file report on historic surface- and ground water-quality data for the region; December 1988 publication.
2. Two open-file reports for surface-water and ground-water quality data collected during the project; June 1992 publication.
3. Two water-supply papers describing results of surface-water and ground-water investigations; December 1992 publication.

Short papers will be published approximately annually beginning in 1989. These reports will serve to describe significant findings in a timely manner.

BUDGET

FISCAL YEAR	GROSS FUNDS
1988	$677,000
1989	614,000
1990	541,000
1991	512,000
1992	399,000
1993	101,000
GRAND TOTAL	$2,844,000

PERSONNEL

The project team will include:

1. Project Chief, hydrologist (GS-11, GS-12 or GS-13), surface-water hydrology and sediment transport specialist.
2. Hydrologist (GS-11 or GS-12), ground-water specialist.
3. Hydrologic Technician, GS-10, responsible for coordination of field activities.

Two Hydrologic Technicians (GS-5) will be assigned 75 percent of their time to the project. Researchers from the Water Resources and Geologic Divisions knowledgeable in radionuclide transport will consult on the project.

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UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

January 27, 1988

Mr. R.D. Mac Nish
District Chief
U.S. Geological Survey
Water Resources Division
300 W. Congress Street
Tucson, Arizona 85701-1393

Dear Bob:

This letter is a follow-up to the January 21, 1988 meeting in Phoenix on the Puerco and lower Little Colorado River Basins study. We believe that earlier studies of the Rio Puerco provide sufficient confirmation and guidance for the Commission to continue its New Lands development plans. Nonetheless, as articulated by Commission staff at the meeting, we are supportive of this project. Its usefulness to the Commission would be enhanced by making the following modifications:

- E.P.A., or an agency which has the capacity to perform health risk assessments, should be involved in project design, etc.
- A health risk assessment should be included as one of the project objectives.
- An examination of the relationship between the Rio Puerco and the New Lands deep well aquifers should be incorporated into the study.

I trust that the proposal will be modified in accordance with the discussion and input at the January 21st meeting. After learning what these modifications to our suggestions will mean in terms of project cost, we will be able to discuss with you the Commission's financial participation in the study.

Best regards.

Sincerely,

Chris

Christopher J. Bavasi
Executive Director

CJB:dlf

United States Department of the Interior
GEOLOGICAL SURVEY
Water Resources Division
300 W. Congress, Box FB-44
Tucson, Arizona 85701

January 27, 1988

Mr. Christopher J. Bavasi
Executive Director
Navajo-Hopi Indian
Relocation Commission
P. O. Box KK
Flagstaff, Arizona 86002

Dear Chris:

We would like to thank you, along with the other members of the Commission for attending our January 21 meeting to discuss financial and technical aspects of our study, "Occurrence and Movement of Radionuclides and Other Trace Elements in the Puerco and Lower Little Colorado River Basins, Arizona and New Mexico." We feel that the meeting was successful in evaluating the technical merits of the proposed study and in laying the foundation for its funding.

One issue raised initially by David Shaw-Serdar concerned Health Risk Assessment with respect to the proposed study. As John Gray indicated, we had not planned to include such an assessment in this study. However, we understand the ultimate importance of converting our data and analytical results into estimates of potential impacts on area inhabitants. To this end, we are contacting the U.S. Environmental Protection Agency and at least two other agencies that may aid in developing a Health Risk Assessment from our research. Our primary consideration is ensuring that the data we collect and the subsequent analysis will provide information directly applicable for developing an assessment. We are also evaluating whether the U.S. Geological Survey, the USEPA, or another qualified agency or firm should perform this assessment. We will also make appropriate modifications to our proposal to include this work.

We will be in contact with you regarding our progress in getting this study started. Thanks again for your interest.

Sincerely yours,

Tom Anderson

Thomas W. Anderson
Subdistrict Chief

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

February 1, 1988

Ms. Virginia Boylan
Special Counsel
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510

Dear Virginia:

During the recent Reauthorization Hearings, Senator Inouye requested information from the Relocation Commission on the water quality in the Rio Puerco River. Enclosed you will find the following documents and correspondence:

(1) Preliminary Assessment of Water Quality in the Alluvial Aquifer of the Puerco River Basin, Northeastern Arizona.

(2) Distribution of Radionuclide and Trace-Elements in Ground Water, Grasses, and Surficial Sediments Associated with the Alluvial Aquifer along the Puerco River, Northeastern Arizona -- A Reconnaissance Sampling Program.

(3) A summary of studies of the water quality of the Rio Puerco, prepared by Mr. David Shaw-Serdar, Research Officer, for the Navajo-Hopi Indian Relocation Commission.

(4) A copy of the proposal submitted to the Relocation Commission by the U.S.G.S. for further studies of the Rio Puerco River.

(5) A copy of the follow-up letter from the Relocation Commission to the U.S.G.S. requesting modifications to the scope of the final report to be generated by the proposed study of the Rio Puerco River.

(6) A copy of the letter from the U.S.G.S. to the Relocation Commission responding to the Commission's request for additional information to be included in the proposed study project.

The Relocation Commission has requested reprogramming of funds to contribute to the funding of the U.S.G.S. study of the Rio Puerco River in its 1988 budget, and will continue to include funding requests for Rio Puerco water quality studies in future years.

If you have any questions regarding this information, please do not hesitate to contact me.

Best regards.

Sincerely,

Christopher J. Bavasi
Executive Director

CJB:dlf

Enclosures